

**ONTARIO
LABOUR RELATIONS BOARD
REPORTS**

May/June 2007



ONTARIO LABOUR RELATIONS BOARD

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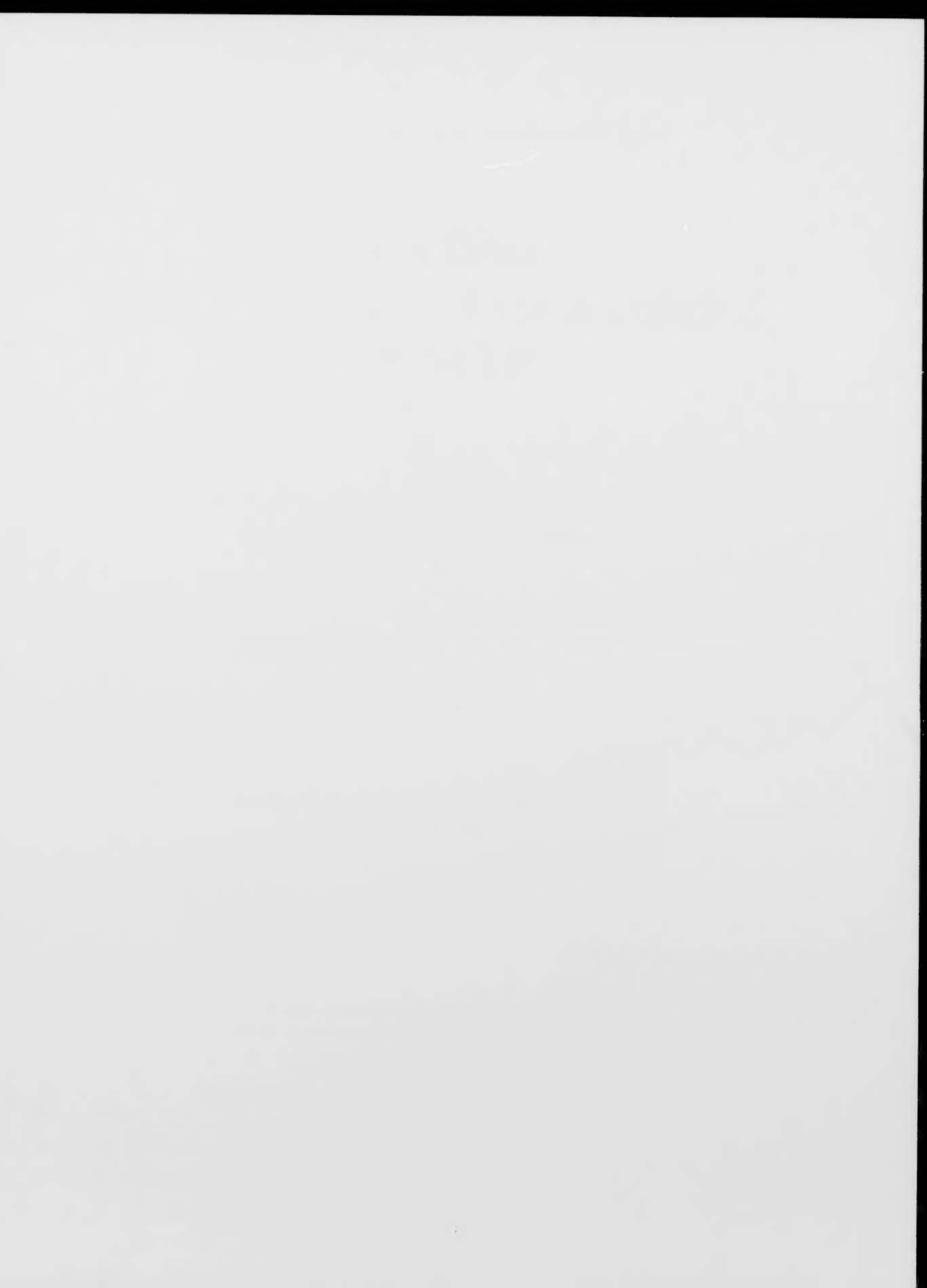
ONTARIO LABOUR RELATIONS BOARD REPORTS

**A Bimonthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [2007] OLRB REP. MAY/JUNE

**EDITORS: VOY STELMASZYNSKI
LEONARD MARVY**

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SUBJECT INDEX

Alteration of Jurisdiction – Construction Industry – Judicial Review – Natural Justice – Practice and Procedure – The Local alleged that the Board's decision, finding just cause for the International to assume jurisdiction of the Local over a computer centre construction project in Barrie, should be quashed on a number of grounds – The Board, noting that s. 147(5) operated to stay the assumption of the Local's jurisdiction, was concerned that a full hearing might render the result inconsequential and moot, sine the project was near completion held a two day consultation in accordance with Rule 41, as the situation required a speedy resolution – The Board, having acknowledged that there were facts in dispute, determined there was sufficient uncontested material to permit it to reach an appropriate decision – The Board fashioned a specific remedy placing restrictions and conditions on the International's transfer of jurisdiction – On judicial review, the court first found that Rule 41 was not *ultra vires*, since there was no improper delegation of authority by the Chair, nor was the rule inconsistent with the scheme of the Act – The court found that the rule sets a standard that must be met before a Vice Chair may exercise their discretion in the circumstances of a particular case, and that the Rule is entirely consistent while noting that the Board "operates in a complex, dynamic, and highly fluid environment where expeditious rulings and informal and accessible procedures are often essential to maintaining the delicate balance between the parties' various interests" – Second, the court found that the Board did not deny the Local natural justice by proceeding with a consultation rather than a full hearing, since the core value embraced by the *audi alteram partem* maxim was met by the Board: providing the parties with an opportunity to be heard – The court also found it was not patently unreasonable for the Board to have chosen this procedure, since the Board was given the authority to balance the need for complete natural justice on the one hand against expedition on the other – Third, the court found that the Board did not exceed its jurisdiction by making findings of fact in the absence of any evidence, since there was evidence before it, the sufficiency and weight of which were within its exclusive jurisdiction, permitting it to make its decision – Fourth, the court found that the Board did not deny natural justice by failing to provide adequate reasons, since it provided a sufficiently adequate explanation of the process it engaged in, the conclusions it reached, on what it founded those conclusions and the results of its conclusions – Finally the court found that the Board's decision on the merits was not patently unreasonable: it was a sound and sensible decision in circumstances of acrimony that permitted the appropriate labour relations objective to be achieved, with the least intrusion on the rights of the Local's members – Application dismissed

IBEW, LOCAL 1739; RE GUILD ELECTRIC LIMITED; RE OLRB

668

Bar – Certification – Construction Industry – The union filed a card-based certification application on the same day that it advised the Board it wished to withdraw an earlier application, where the Board had found, after hearing status dispute evidence, that a representation vote was required due to membership support being between 40 and 55 percent – The employer requested that the Board impose a discretionary bar pursuant to s. 7(9) – The Board found that the stage of the proceeding when the union seeks leave of the Board to withdraw its application is significant – Here the union chose to withdraw its application after realizing that it did not have sufficient support for certification without a vote – The Board considered this a far different circumstance than when a union withdraws early, after seeing the employer's response and realizing it has insufficient support – The Board found, after the parties' prolonged litigation, that was not fair to the employer, having successfully resisted some of the union's positions, to

have to start all over again – The employer and employees were entitled to a period of repose – The Board exercised its discretion and imposed a six month bar – Application dismissed

K.J. BEAMISH CONSTRUCTION CO. LTD.; RE IUOE, LOCAL 793

574

Bargaining Unit – *Public Sector Labour Relations Transition Act, 1997* – Five community care access centres (CCACs) were merged – OPSEU applied to the Board for a determination of the appropriate bargaining agent and bargaining unit(s) – The applicant represents 190 of the affected employees in the single largest predecessor bargaining unit – The applicant asserts that a single “all employee” bargaining unit is appropriate, whereas the employer, CUPE and ONA assert that there should be two bargaining units: one comprised of professional employees and the other of office and clerical employees – The Board noted that both options are consistent with the purpose of s.22(7) of the Act – Finding that either a single unit or a two-unit configuration could comfortably obtain for the newly-configured CCAC, the Board signaled its preference to maintain the *status quo* where there are existing, fully functional collective bargaining relationships – In this case four of five CCACs, or approximately sixty-five per cent of employees, operated under a two bargaining unit system – Two bargaining units ordered (*Editors’ note*: Following the counting of the ballots, OPSEU won the office and clerical unit; ONA became the bargaining agent for the professional employees: decision dated May 12, 2007)

HAMILTON NIAGARA HALDIMAND BRANT COMMUNITY CARE ACCESS CENTRE; RE OPSEU; RE HAMILTON COMMUNITY CARE ACCESS CENTRE; RE BRANT COMMUNITY CARE ACCESS CENTRE; RE COMMUNITY CARE ACCESS CENTRE NIAGARA; RE COMMUNITY CARE ACCESS CENTRE OF HALTON; RE HALDIMAND-NORFOLK COMMUNITY CARE ACCESS CENTRE; RE CUPE AND ITS LOCAL 4700; RE ONTARIO NURSES ASSOCIATION

547

Certification – Bar – Construction Industry – The union filed a card-based certification application on the same day that it advised the Board it wished to withdraw an earlier application, where the Board had found, after hearing status dispute evidence, that a representation vote was required due to membership support being between 40 and 55 percent – The employer requested that the Board impose a discretionary bar pursuant to s. 7(9) – The Board found that the stage of the proceeding when the union seeks leave of the Board to withdraw its application is significant – Here the union chose to withdraw its application after realizing that it did not have sufficient support for certification without a vote – The Board considered this a far different circumstance than when a union withdraws early, after seeing the employer’s response and realizing it has insufficient support – The Board found, after the parties’ prolonged litigation, that was not fair to the employer, having successfully resisted some of the union’s positions, to have to start all over again – The employer and employees were entitled to a period of repose – The Board exercised its discretion and imposed a six month bar – Application dismissed

K.J. BEAMISH CONSTRUCTION CO. LTD.; RE IUOE, LOCAL 793

574

Certification – Certification where Act Contravened – Construction Industry – Remedies – Representation Vote – Unfair Labour Practice – The union brought an application for certification and remedial certification under s. 11, alleging that the employer had contravened the Act by terminating a union organizer, thereby preventing the union from being able to demonstrate it had more than 40% membership support – The employer, solely owned by Normoyle, had four employees during the relevant time period –

McCarthy, the inside union organizer, was terminated nine days after being hired, and the day after Normoyle discovered there was a union organizing drive – The Board did not accept that McCarthy was fired for performance deficiencies, for being slow in his work and for being late – The Board noted that the employer did not warn or reprimand McCarthy for these matters at the time they occurred, nor was he allowed any opportunity to change – The Board found the totality of the performance issues were of no consequence to Normoyle at the time they occurred because he did not act on them – The Board further found that the timing of the termination, one day after Normoyle discovered that McCarthy was involved in the union organizing the work place, was significant in light of the lack of employer-demonstrated reasons for termination – The Board found that McCarthy was fired because he was behind the union organizing drive and this was a breach of the Act – The Board then turned to the appropriate remedy under s. 11 recognizing that it can only certify without a representation vote where “no other remedy would be sufficient to counter the effects of the contravention” – The Board found that the employees could not freely express their wishes in a representation vote in the context of a discharge of an individual associated with union activity – The employer’s actions served two purposes: stopping the union organizer from accessing employees and sending a message to employees that support for the union meant job loss – The Board found that a representation vote with ancillary relief would be insufficient to counter this effect – The union’s application under s. 11 was granted and the union was certified – Application granted

1443760 ONTARIO INC. OPERATING AS SWING STAGE EQUIPMENT RENTALS
OTTAWA; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, LOCAL 93

485

Certification – Construction Industry – BACU filed a series of card-based applications to certify the employees in bargaining units for which it already holds bargaining rights – The union asserted it had the statutory right to seek reconfirmation of its member support – Given that the union demonstrated evidence of greater than 55% support for each unit sought, there was no need for a vote – It appeared to the Board that BACU was preempting any possible raids to its incumbent units – Although it expressed its reluctance to sanction BACU’s conduct, the Board felt it was inappropriate to engage in a challenge to that conduct – The Board noted that such an application appeared to be an indirect application for termination of a collective agreement, and could possibly be a means of redesigning a bargaining unit without the employer’s approval – Nonetheless, the Board determined it must proceed with the applications – Matters continue

GEORGE & ASMUSSEN LIMITED et al; RE BRICK AND ALLIED CRAFT UNION
OF CANADA; RE IUBAC LOCAL 6; RE IUBAC LOCAL 7; RE IUBAC LOCAL 20;
RE BCM MASONRY RE; VAUGHAN MASONRY; RE TWIN MASONRY INC.; RE
BERNEL MASONRY LTD.; SQUIRE MASONRY LTD.; RE VINMOD
CONSTRUCTION; RE CANEX MASONRY LTD.; MAC MASONRY INC.

542

Certification – Construction Industry – BACU filed a card-based application to certify the employees in a bargaining unit for which it already holds bargaining rights – When asked by the Board to explain its motivation, the applicant submitted that it need not provide any justification other than to assert it was exercising its statutory rights – Notwithstanding the Board’s concerns that a grant of the application would place the applicant in the exact position it occupied when it made the application (as would a dismissal of the application), and despite the fact that granting the certificate would allow the applicant to unilaterally obtain early termination of its existing collective agreement, and in the absence of any opposition from either the responding party or the intervenors,

the Board could find nothing in the Act to explicitly preclude the application for certification – In the absence of any opposition to the application, the matter is allowed to proceed – Matter referred to Regional Certification Meeting

STEFCON CONSTRUCTION INC.; RE BRICK AND ALLIED CRAFT UNION OF CANADA; RE IUBAC LOCAL 6; RE IUBAC LOCAL 7; RE IUBAC LOCAL 20..... 644

Certification – Construction Industry – Employer – Practice and Procedure – Related Employer – Timeliness – The Board found nothing wrong with the application naming three possible employers as responding parties: the applicant specifically referenced subsection 1(4) and asked that the certificate name all three entities – The responding party filed its response five days late but asked the Board to exercise its discretion to accept the late-filed information in accordance with the ruling of the Divisional Court in *Maystar* (see [2007] OLRB Rep. March/April 459) – The Board examined possible criteria for the exercise of discretion: the nature of certification applications and the need for speed in their determination; the reasons for the late filing; prejudice to the applicant – The Board finds that prejudice is present in every case, and will be the same in every case – In the circumstances of this case, the Board does not exercise its discretion to accept the late-filed information – The applicant delivered its materials to three fax machines for the three employers; personal delivery is not a requirement of the Act or the Board's Rules – Time extension allowed for response to related employer allegations – Matter continues

REIDS UPTOWN HOMES, REIDCO NORTH LTD., S.R. PROPERTIES INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 633

Certification – Construction Industry – Practice and Procedure – Timeliness – The Board finds that in a card-based application for certification, there is no prejudice to the union if the responding party fails to provide the response to the union at the same time it files it with the Board – The response was delivered to the applicant one week after it was due – The Board relieves against the late delivery of the response – Matter continues

LEMMO MASONRY INC.; RE LIUNA LOCAL 527..... 583

Certification – Employee – Status – The Board examined the position of “inventory clerk” or “auditor” for purposes of certification of a clerical unit of the employer's employees – The parties had earlier agreed to alter the recognition clause of the employer's production unit because the auditors were supervisors within the meaning of the bargaining unit description – In the current application the union sought to have the auditors excluded either because they were supervisors or because they performed managerial functions within the meaning of s. 1(3) of the Act – The Board held that since the parties had agreed the auditors exercised supervisory functions so as to be excluded from the production unit, and there was no material change in their status prior to the instant application, they remained supervisors within the meaning of the clerical bargaining unit – Status determined

PENSKE LOGISTICS; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 880 616

Certification where Act Contravened – Certification – Construction Industry – Remedies – Representation Vote – Unfair Labour Practice – The union brought an application for certification and remedial certification under s. 11, alleging that the employer had contravened the Act by terminating a union organizer, thereby preventing the union from being able to demonstrate it had more than 40% membership support – The employer,

solely owned by Normoyle, had four employees during the relevant time period – McCarthy, the inside union organizer, was terminated nine days after being hired, and the day after Normoyle discovered there was a union organizing drive – The Board did not accept that McCarthy was fired for performance deficiencies, for being slow in his work and for being late – The Board noted that the employer did not warn or reprimand McCarthy for these matters at the time they occurred, nor was he allowed any opportunity to change – The Board found the totality of the performance issues were of no consequence to Normoyle at the time they occurred because he did not act on them – The Board further found that the timing of the termination, one day after Normoyle discovered that McCarthy was involved in the union organizing the work place, was significant in light of the lack of employer-demonstrated reasons for termination – The Board found that McCarthy was fired because he was behind the union organizing drive and this was a breach of the Act – The Board then turned to the appropriate remedy under s. 11 recognizing that it can only certify without a representation vote where “no other remedy would be sufficient to counter the effects of the contravention” – The Board found that the employees could not freely express their wishes in a representation vote in the context of a discharge of an individual associated with union activity – The employer’s actions served two purposes: stopping the union organizer from accessing employees and sending a message to employees that support for the union meant job loss – The Board found that a representation vote with ancillary relief would be insufficient to counter this effect – The union’s application under s. 11 was granted and the union was certified – Application granted

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OTTAWA; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, LOCAL 93

485

Collective Agreement – Duty of Fair Representation – Trade Union – The six applicants, members of the respondent trade union, CHCW, had filed lay off grievances that were scheduled for arbitration – During a displacement campaign by OPSEU, the members were advised that their grievances would be withdrawn should the members vote for OPSEU – OPSEU was successful and, prior to OPSEU providing a letter to CHCW that OPSEU would act as agent and incur all costs for the grievances, CHCW withdrew the grievances – The Board first found that CHCW’s campaign statement--that it would withdraw the grievances--was not a breach of s. 76, since its actions were a reasonable interpretation of its obligations on the loss of representation rights – The Board also found that CHCW’s withdrawal of the grievances, prior to hearing from OPSEU, did not breach s. 74 since nothing required a defeated incumbent union to “keep alive” outstanding grievances against the possibility that the incoming union might seek its permission to act as agent with proper cost protection – Accordingly the Board found, in the absence of any obligation by OPSEU to request agency for carriage of the grievances or any reasonable expectation that it would do so, that the withdrawal of the grievances accorded with CHCW’s institutional interests and were not a breach of the Act – Finally, once CHCW received OPSEU’s letter, the Board found CHCW’s failure to take any action to retract its withdrawal could not be a breach of its duty since it could no longer unilaterally accomplish this – Application dismissed

CORPORATION OF THE COUNTY OF GREY OPERATING AS GREY GABLES
COUNTY HOME FOR THE AGED, THE; RE PEARL LONG ET AL; RE CANADIAN
HEALTH CARE WORKERS UNION

530

Collective Bargaining – Construction Industry – Duty to Bargain in Good Faith – Intervenors –
Parties – Unfair Labour Practice – Three of five constituent member associations of

PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL breached s. 17 of the Act – The applicants allege that LEBA and the two other constituent members, by entering into agreements extending the scope of their appendices and subcontracting provisions, have forced a recognition issue to impasse, since PEBAL cannot adopt an agreement entered into by some members that has a direct negative impact on its other members – The Board found that just as there is no duty to bargain in good faith owed to employees, there is no duty owed to the constituent members of PEBAL – The Board further noted that while it is charged with determining the applications or complaints that are filed with it, the Board must be satisfied the applicants do not just have an interest in the matter, but have the legal right to proceed with the complaint – Here the Board found since there is no duty on LEBA to bargain in good faith with the constituent members of PEBAL, the applicants do not have the legal right to assert that LEBA violated the duty to bargain in good faith owed to PEBAL – Finally the Board characterized this matter as one of a complaint about the manner in which two of the five constituent members of PEBAL have dealt with the other three members (and how LEBA has taken advantage of this schism), and not as one encompassed by s. 17 of the Act – Application dismissed

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION
LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND
WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS
ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS
ASSOCIATION OF ONTARIO.....

599

Collective Bargaining – Construction Industry – Interference with employers’ organization –
Intervenors – Parties – Unfair Labour Practice – Three of five constituent member
associations of PEBAL filed a complaint alleging the LEBA together with the other two
constituent members of PEBAL interfered in the administration of the employers’
organization contrary to s. 71 of the Act – The Board ruled on four preliminary motions
raised by the responding parties – First, the Board found that the members of the
employers’ organization had a direct legal interest in having their organization operate
without interference by a trade union and accordingly had standing – Second, the Board
declined to determine whether the applicants had pled a *prima facie* case and dismissed
the responding parties’ motion to dismiss – Third the Board declined to exercise its
discretion to refuse to entertain the complaint – Finally, the Board found merit in the
responding parties’ submissions seeking to defer the matter pending the outcome of an
Industrial Inquiry Commission, given that through its mandate the Commission would
provide a much better forum for discussing the parties’ differences – Adjourned pending
release of Commission’s report

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION
LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND
WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS
ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS
ASSOCIATION OF ONTARIO.....

606

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542

Construction Industry – Practice and Procedure – Termination – Timeliness – The application was received by the Board on May 4, 2007, having been delivered to a courier on May 2, 2007 – The Board held that as a rule an application is filed on the day the Board actually receives it, the only exception occurring in the construction industry where certifications and terminations given to Priority Courier will be deemed to have been filed on the date they were given to the courier (Rule 24.2) – The applicant in the present case gave his application to a different courier – The Board was not prepared to extend the exception beyond the one contemplated in the Rules – Application dismissed

YORKWOOD HOMES; RE MARK JONES; RE UNIVERSAL WORKERS UNION, LIUNA LOCAL 183

666

Construction Industry – Alteration of Jurisdiction – Judicial Review – Natural Justice – Practice and Procedure – The Local alleged that the Board's decision, finding just cause for the International to assume jurisdiction of the Local over a computer centre construction project in Barrie, should be quashed on a number of grounds – The Board, noting that s. 147(5) operated to stay the assumption of the Local's jurisdiction, was concerned that a full hearing might render the result inconsequential and moot, since the project was near completion held a two day consultation in accordance with Rule 41, as the situation required a speedy resolution – The Board, having acknowledged that there were facts in dispute, determined there was sufficient uncontested material to permit it to reach an appropriate decision – The Board fashioned a specific remedy placing restrictions and conditions on the International's transfer of jurisdiction – On judicial review, the court first found that Rule 41 was not *ultra vires*, since there was no improper delegation of authority by the Chair, nor was the rule inconsistent with the scheme of the Act – The court found that the rule sets a standard that must be met before a Vice Chair may exercise their discretion in the circumstances of a particular case, and that the Rule is entirely consistent while noting that the Board "operates in a complex, dynamic, and highly fluid environment where expeditious rulings and informal and accessible procedures are often essential to maintaining the delicate balance between the parties' various interests" – Second, the court found that the Board did not deny the Local natural justice by proceeding with a consultation rather than a full hearing, since the core value embraced by the *audi alteram partem* maxim was met by the Board: providing the parties with an opportunity to be heard – The court also found it was not patently unreasonable for the Board to have chosen this procedure, since the Board was given the authority to balance the need for complete natural justice on the one hand against expedition on the other – Third, the court found that the Board did not exceed its jurisdiction by making findings of fact in the absence of any evidence, since there was evidence before it, the sufficiency and weight of which were within its exclusive jurisdiction, permitting it to make its decision – Fourth, the court found that the Board did not deny natural justice by failing to provide adequate reasons, since it provided a sufficiently adequate explanation of the process it engaged in, the conclusions it reached,

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K.J. BEAMISH CONSTRUCTION CO. LTD.; RE IUOE, LOCAL 793 574

Construction Industry – Certification – BACU filed a card-based application to certify the employees in a bargaining unit for which it already holds bargaining rights – When asked by the Board to explain its motivation, the applicant submitted that it need not provide any justification other than to assert it was exercising its statutory rights – Notwithstanding the Board's concerns that a grant of the application would place the applicant in the exact position it occupied when it made the application (as would a dismissal of the application), and despite the fact that granting the certificate would allow the applicant to unilaterally obtain early termination of its existing collective agreement, and in the absence of any opposition from either the responding party or the intervenors, the Board could find nothing in the Act to explicitly preclude the application for certification – In the absence of any opposition to the application, the matter is allowed to proceed – Matter referred to Regional Certification Meeting

STEFCON CONSTRUCTION INC.; RE BRICK AND ALLIED CRAFT UNION OF CANADA; RE IUBAC LOCAL 6; RE IUBAC LOCAL 7; RE IUBAC LOCAL 20 644

Construction Industry – Certification – Certification where Act Contravened – Remedies – Representation Vote – Unfair Labour Practice – The union brought an application for certification and remedial certification under s. 11, alleging that the employer had contravened the Act by terminating a union organizer, thereby preventing the union from being able to demonstrate it had more than 40% membership support – The employer, solely owned by Normoyle, had four employees during the relevant time period – McCarthy, the inside union organizer, was terminated nine days after being hired, and the day after Normoyle discovered there was a union organizing drive – The Board did not accept that McCarthy was fired for performance deficiencies, for being slow in his work and for being late – The Board noted that the employer did not warn or reprimand McCarthy for these matters at the time they occurred, nor was he allowed any

opportunity to change – The Board found the totality of the performance issues were of no consequence to Normoyle at the time they occurred because he did not act on them – The Board further found that the timing of the termination, one day after Normoyle discovered that McCarthy was involved in the union organizing the work place, was significant in light of the lack of employer-demonstrated reasons for termination – The Board found that McCarthy was fired because he was behind the union organizing drive and this was a breach of the Act – The Board then turned to the appropriate remedy under s. 11 recognizing that it can only certify without a representation vote where “no other remedy would be sufficient to counter the effects of the contravention” – The Board found that the employees could not freely express their wishes in a representation vote in the context of a discharge of an individual associated with union activity – The employer’s actions served two purposes: stopping the union organizer from accessing employees and sending a message to employees that support for the union meant job loss – The Board found that a representation vote with ancillary relief would be insufficient to counter this effect – The union’s application under s. 11 was granted and the union was certified – Application granted

1443760 ONTARIO INC. OPERATING AS SWING STAGE EQUIPMENT RENTALS
OTTAWA; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, LOCAL 93

485

Construction Industry – Certification – Employer – Practice and Procedure – Related Employer – Timeliness – The Board found nothing wrong with the application naming three possible employers as responding parties: the applicant specifically referenced subsection 1(4) and asked that the certificate name all three entities – The responding party filed its response five days late but asked the Board to exercise its discretion to accept the late-filed information in accordance with the ruling of the Divisional Court in *Maystar* (see [2007] OLRB Rep. March/April 459) – The Board examined possible criteria for the exercise of discretion: the nature of certification applications and the need for speed in their determination; the reasons for the late filing; prejudice to the applicant – The Board finds that prejudice is present in every case, and will be the same in every case – In the circumstances of this case, the Board does not exercise its discretion to accept the late-filed information – The applicant delivered its materials to three fax machines for the three employers; personal delivery is not a requirement of the Act or the Board’s Rules – Time extension allowed for response to related employer allegations – Matter continues

REIDS UPTOWN HOMES, REIDCO NORTH LTD., S.R. PROPERTIES INC.; RE
LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL

633

Construction Industry – Certification – Practice and Procedure – Timeliness – The Board finds that in a card-based application for certification, there is no prejudice to the union if the responding party fails to provide the response to the union at the same time it files it with the Board – The response was delivered to the applicant one week after it was due – The Board relieves against the late delivery of the response – Matter continues

LEMMO MASONRY INC.; RE LIUNA LOCAL 527

583

Construction Industry – Collective Bargaining – Duty to Bargain in Good Faith – Intervenors – Parties – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL breached s. 17 of the Act – The applicants allege that LEBA and the two other constituent members, by entering into agreements extending the scope of their appendices and subcontracting provisions, have forced a recognition issue to impasse,

since PEBAL cannot adopt an agreement entered into by some members that has a direct negative impact on its other members – The Board found that just as there is no duty to bargain in good faith owed to employees, there is no duty owed to the constituent members of PEBAL – The Board further noted that while it is charged with determining the applications or complaints that are filed with it, the Board must be satisfied the applicants do not just have an interest in the matter, but have the legal right to proceed with the complaint – Here the Board found since there is no duty on LEBA to bargain in good faith with the constituent members of PEBAL, the applicants do not have the legal right to assert that LEBA violated the duty to bargain in good faith owed to PEBAL – Finally the Board characterized this matter as one of a complaint about the manner in which two of the five constituent members of PEBAL have dealt with the other three members (and how LEBA has taken advantage of this schism), and not as one encompassed by s. 17 of the Act – Application dismissed

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION
LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND
WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS
ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS
ASSOCIATION OF ONTARIO.....

599

Construction Industry – Collective Bargaining – Interference with employers’ organization – Intervenor – Parties – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL interfered in the administration of the employers’ organization contrary to s. 71 of the Act – The Board ruled on four preliminary motions raised by the responding parties – First, the Board found that the members of the employers’ organization had a direct legal interest in having their organization operate without interference by a trade union and accordingly had standing – Second, the Board declined to determine whether the applicants had pled a *prima facie* case and dismissed the responding parties’ motion to dismiss – Third the Board declined to exercise its discretion to refuse to entertain the complaint – Finally, the Board found merit in the responding parties’ submissions seeking to defer the matter pending the outcome of an Industrial Inquiry Commission, given that through its mandate the Commission would provide a much better forum for discussing the parties’ differences – Adjourned pending release of Commission’s report

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION
LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND
WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS
ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS
ASSOCIATION OF ONTARIO.....

606

Construction Industry Grievance – Jurisdictional Dispute – Remedies – Following a finding that Bondfield had incorrectly assigned drywall taping work to the Painters in the Kingston area, the Bricklayers sought damages for the breach – The Board canvassed its jurisprudence in JD-related damage claims, where it asks: was the action of the employer substantively unreasonable or was there procedural unreasonableness in the employer’s decision-making process? – In this case, the Board found that the assignment by Bondfield clearly violated two important factors that would constitute indicia of unreasonableness (an earlier Board decision; and area practice) – Bondfield argued that its actions were not unreasonable and, in any event, it was not the employer proper since it had subcontracted the taping work to Oakdale, a party bound exclusively to the Painters agreement – The Board held that a work assignment which flies in the face of an

unequivocal earlier Board ruling involving the same three parties amounts to second guessing the Board decision and will not be countenanced; a claim for work on the basis of a Board decision in a JD is superior to other claims based on other factors – Grievance allowed; quantum of damages remitted to the parties

BONDFIELD CONSTRUCTION; RE BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 10 AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 10 499

Discharge – Health and Safety – Reprisal – The applicant complained that she had been discharged for raising health and safety concerns associated with some renovations undertaken by the employer – The Board found the employer had addressed the employee's concerns in several ways, including changing the employee's shift – The Board held that the applicant had simply decided to move on to a job she knew was available to her, and wished to take advantage of what had transpired in the workplace to seek a monetary benefit – Application dismissed

IVY VETERINARY SERVICES; RE KRISTINE NEVILLE; RE DR. CATHY EMMS... 563

Discharge – Employment Standards – The applicant asserted that her pregnancy played a role in the employer's decision to terminate her – The onus of establishing that there was no contravention of section 74 of the Act lies on the employer – The Board was satisfied that the employer fulfilled its burden; the Board drew no adverse inference from the employer's failure to call the employer's spouse when the applicant had not asserted in her application or at the hearing that the spouse was aware of the pregnancy – Application dismissed

RAJAE ELALAMI; RE DR. EMAD HANNA AND DIRECTOR OF EMPLOYMENT STANDARDS 628

Duty of Fair Representation – Collective Agreement – Trade Union – The six applicants, members of the respondent trade union, CHCW, had filed lay off grievances that were scheduled for arbitration – During a displacement campaign by OPSEU, the members were advised that their grievances would be withdrawn should the members vote for OPSEU – OPSEU was successful and, prior to OPSEU providing a letter to CHCW that OPSEU would act as agent and incur all costs for the grievances, CHCW withdrew the grievances – The Board first found that CHCW's campaign statement--that it would withdraw the grievances--was not a breach of s. 76, since its actions were a reasonable interpretation of its obligations on the loss of representation rights – The Board also found that CHCW's withdrawal of the grievances, prior to hearing from OPSEU, did not breach s. 74 since nothing required a defeated incumbent union to "keep alive" outstanding grievances against the possibility that the incoming union might seek its permission to act as agent with proper cost protection – Accordingly the Board found, in the absence of any obligation by OPSEU to request agency for carriage of the grievances or any reasonable expectation that it would do so, that the withdrawal of the grievances accorded with CHCW's institutional interests and were not a breach of the Act – Finally, once CHCW received OPSEU's letter, the Board found CHCW's failure to take any action to retract its withdrawal could not be a breach of its duty since it could no longer unilaterally accomplish this – Application dismissed

CORPORATION OF THE COUNTY OF GREY OPERATING AS GREY GABLES COUNTY HOME FOR THE AGED, THE; RE PEARL LONG ET AL; RE CANADIAN HEALTH CARE WORKERS UNION 530

Duty of Fair Representation – Evidence – Judicial Review – The standard of review with respect to the merits of the Board's decision was patent unreasonableness – The court found that the Board's decision on the merits and in its reconsideration were entirely reasonable: the Board concluded the union could not continue to represent the applicant because of his antagonistic and uncooperative attitude (which was unwarranted); and there was ample evidence on which to base that conclusion – The court also found no denial of procedural fairness in the manner in which the Board proceeded by consultation – A motion to introduce fresh evidence was also dismissed – Application dismissed

STEPHANE VERREAULT; RE UNITED ASSOCIATION OF JOURNEYPERSONS AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE US AND CANADA, TEAMSTERS LOCAL UNION 419; RE OLRB.....

695

Duty to Bargain in Good Faith – Collective Bargaining – Construction Industry – Intervenors – Parties – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL breached s. 17 of the Act – The applicants allege that LEBA and the two other constituent members, by entering into agreements extending the scope of their appendices and subcontracting provisions, have forced a recognition issue to impasse, since PEBAL cannot adopt an agreement entered into by some members that has a direct negative impact on its other members – The Board found that just as there is no duty to bargain in good faith owed to employees, there is no duty owed to the constituent members of PEBAL – The Board further noted that while it is charged with determining the applications or complaints that are filed with it, the Board must be satisfied the applicants do not just have an interest in the matter, but have the legal right to proceed with the complaint – Here the Board found since there is no duty on LEBA to bargain in good faith with the constituent members of PEBAL, the applicants do not have the legal right to assert that LEBA violated the duty to bargain in good faith owed to PEBAL – Finally the Board characterized this matter as one of a complaint about the manner in which two of the five constituent members of PEBAL have dealt with the other three members (and how LEBA has taken advantage of this schism), and not as one encompassed by s. 17 of the Act – Application dismissed

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS ASSOCIATION OF ONTARIO.....

599

Employee – Certification – Status – The Board examined the position of “inventory clerk” or “auditor” for purposes of certification of a clerical unit of the employer's employees – The parties had earlier agreed to alter the recognition clause of the employer's production unit because the auditors were supervisors within the meaning of the bargaining unit description – In the current application the union sought to have the auditors excluded either because they were supervisors or because they performed managerial functions within the meaning of s. 1(3) of the Act – The Board held that since the parties had agreed the auditors exercised supervisory functions so as to be excluded from the production unit, and there was no material change in their status prior to the instant application, they remained supervisors within the meaning of the clerical bargaining unit – Status determined

PENSKE LOGISTICS; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 880

616

Employee – Employment Standards – The employer sought review of an employment standards officer's order to pay wages to two employees – The employer argued that the individuals were independent contractors and not employees, and therefore not subject to the Act – The Board held that the employer, a construction contracting business, engaged individuals to perform work on a project by project basis: the company's director found the work, estimated the cost of the job, estimated the price, then hired the individuals to work on the projects; payments were made every two weeks or at the end of the job; individuals were not free to assign work to others – The Board found that an employment relationship existed between the parties, and that poor performance was no reason to deny the employees their wages – Application dismissed

ILARIS CORPORATION; RE ARTEM GADZEVYCH; RE MIKHAIL KATAYEV; RE VICTOR CHORIKOV; RE TATIANA CHLYGINA AND DIRECTOR OF EMPLOYMENT STANDARDS.....

558

Employee – Interference with Trade Union – Remedies – Unfair Labour Practice – The collective agreement between the University and YUSA included eligibility to participate in a pension plan and post-retirement benefits – The University, arguing retirees were not employees, refused to provide YUSA with the names and addresses of persons who had retired from the University and had been employed in the bargaining unit represented by YUSA immediately prior to their retirement – The Board did not find it necessary to determine whether retirees were "employees" for at least some purposes of the Act – The Board found as long as it was arguable that YUSA had an obligation or the right to pursue a grievance respecting the continued provision of benefits to retirees in accordance with the collective agreement provisions, the denial of information to it amounted to an interference with its administration, contrary to section 70 – Declaration and direction that information be provided

YORK UNIVERSITY; RE YORK UNIVERSITY STAFF ASSOCIATION

658

Employer – Certification – Construction Industry – Practice and Procedure – Related Employer – Timeliness – The Board found nothing wrong with the application naming three possible employers as responding parties: the applicant specifically referenced subsection 1(4) and asked that the certificate name all three entities – The responding party filed its response five days late but asked the Board to exercise its discretion to accept the late-filed information in accordance with the ruling of the Divisional Court in *Maystar* (see [2007] OLRB Rep. March/April 459) – The Board examined possible criteria for the exercise of discretion: the nature of certification applications and the need for speed in their determination; the reasons for the late filing; prejudice to the applicant – The Board finds that prejudice is present in every case, and will be the same in every case – In the circumstances of this case, the Board does not exercise its discretion to accept the late-filed information – The applicant delivered its materials to three fax machines for the three employers; personal delivery is not a requirement of the Act or the Board's Rules – Time extension allowed for response to related employer allegations – Matter continues

REIDS UPTOWN HOMES, REIDCO NORTH LTD., S.R. PROPERTIES INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL

633

Employment Standards – Discharge – The applicant asserted that her pregnancy played a role in the employer's decision to terminate her – The onus of establishing that there was no contravention of section 74 of the Act lies on the employer – The Board was satisfied that the employer fulfilled its burden; the Board drew no adverse inference from the employer's failure to call the employer's spouse when the applicant had not asserted in

her application or at the hearing that the spouse was aware of the pregnancy –
Application dismissed

RAJAE ELALAMI; RE DR. EMAD HANNA AND DIRECTOR OF EMPLOYMENT
STANDARDS

628

Employment Standards – Employee – The employer sought review of an employment standards officer's order to pay wages to two employees – The employer argued that the individuals were independent contractors and not employees, and therefore not subject to the Act – The Board held that the employer, a construction contracting business, engaged individuals to perform work on a project by project basis: the company's director found the work, estimated the cost of the job, estimated the price, then hired the individuals to work on the projects; payments were made every two weeks or at the end of the job; individuals were not free to assign work to others – The Board found that an employment relationship existed between the parties, and that poor performance was no reason to deny the employees their wages – Application dismissed

ILARIS CORPORATION; RE ARTEM GADZEVYCH; RE MIKHAIL KATAYEV; RE
VICTOR CHORIKOV; RE TATIANA CHLYGINA AND DIRECTOR OF
EMPLOYMENT STANDARDS.....

558

Employment Standards – Premier Fitness challenged an order requiring it to pay holiday pay to two personal trainers, arguing they were elect-to-work employees and exempt from such payment pursuant to s. 9(k) of O/Reg. 285/01 – The Board found that the employer scheduled the trainers for work beyond their declared availability, and expected them to meet the employer's needs – The elect-to-work status was illusory – Applications dismissed; orders to pay affirmed

PREMIER FITNESS; RE JANIS STRATHDEE; RE ELAINE FLETCHER AND
DIRECTOR OF EMPLOYMENT STANDARDS.....

626

Employment Standards – The applicant sought review of a refusal to award him overtime pay from his employer, for work carried out in the U.S. – The employer argued that the work in the U.S. was not a continuation of work performed in Ontario, and accordingly was not work covered by s.3 of the Act – The Board found that the applicant's work in Michigan was indeed a continuation of work performed in Ontario, because the applicant transported materials from Ontario to the U.S. job site and then assisted in the installation of those materials in the U.S. – Application allowed; overtime pay awarded (This decision came to the editors' attention subsequent to the preparation of the May 2007 *Highlights*)

JAMES WAY CONSTRUCTION INC.; RE TONY SHEARING AND DIRECTOR OF
EMPLOYMENT STANDARDS.....

572

Employment Standards – The employer challenged an order for vacation and termination pay – The employer argued that any paid time off during the employment relationship could constitute paid vacation – The Board held that the *Employment Standards Act, 2000* does not provide that a day's wages paid in circumstances where the employee did not work necessarily constitutes a vacation – Further, the Board found that the employer immediately terminated the employee when she attempted to give two weeks' notice of her resignation – Application dismissed – Order adjusted to reflect full entitlement to termination pay

PETER J. DOUCET ; RE ELIZABETH PITTUI AND DIRECTOR OF EMPLOYMENT STANDARDS	621
Evidence – Duty of Fair Representation – Judicial Review – The standard of review with respect to the merits of the Board’s decision was patent unreasonableness – The court found that the Board’s decision on the merits and in its reconsideration were entirely reasonable: the Board concluded the union could not continue to represent the applicant because of his antagonistic and uncooperative attitude (which was unwarranted); and there was ample evidence on which to base that conclusion – The court also found no denial of procedural fairness in the manner in which the Board proceeded by consultation – A motion to introduce fresh evidence was also dismissed – Application dismissed	
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Evidence – Health and Safety – Practice and Procedure – The Board ruled on the admissibility of evidence in this health and safety appeal (for a history of the matter, see [2006] OLRB Rep. September/October 648) – The Board held that since the orders under appeal dated from 2002, only the evidence available before the issuance of the orders would be admissible – To allow the inclusion of subsequent events could condone conduct that, absent the appeal, would have constituted a contravention of the Act – Since no orders were issued regarding work done after 2002, the Board had no authority to adjudicate what happened after that date – Matter continues	
1353837 ONTARIO INC./LAWRENCE RYAN; RE PETER MARTIN AND JOHN DENNIS, INSPECTORS.....	481
Health and Safety – Discharge – Reprisal – The applicant complained that she had been discharged for raising health and safety concerns associated with some renovations undertaken by the employer – The Board found the employer had addressed the employee’s concerns in several ways, including changing the employee’s shift – The Board held that the applicant had simply decided to move on to a job she knew was available to her, and wished to take advantage of what had transpired in the workplace to seek a monetary benefit – Application dismissed	
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Interference with employers’ organization – Collective Bargaining – Construction Industry – Intervenors – Parties – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two	

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LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND
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ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS
ASSOCIATION OF ONTARIO.....

606

Interference with Trade Union – Employee – Remedies – Unfair Labour Practice – The collective agreement between the University and YUSA included eligibility to participate in a pension plan and post-retirement benefits – The University, arguing retirees were not employees, refused to provide YUSA with the names and addresses of persons who had retired from the University and had been employed in the bargaining unit represented by YUSA immediately prior to their retirement – The Board did not find it necessary to determine whether retirees were “employees” for at least some purposes of the Act – The Board found as long as it was arguable that YUSA had an obligation or the right to pursue a grievance respecting the continued provision of benefits to retirees in accordance with the collective agreement provisions, the denial of information to it amounted to an interference with its administration, contrary to section 70 – Declaration and direction that information be provided

YORK UNIVERSITY; RE YORK UNIVERSITY STAFF ASSOCIATION

658

Interim Relief – Trusteeship – Local 31 filed a s. 149 application challenging the imposition of supervision over it by BACU – BACU sought interim relief from the Board to be able to continue its trusteeship because of the Local's alleged failure to resist displacement overtures brought by another union – The Board held that s. 98(1)(a) gave it the authority to do what was necessary to preserve its processes; an interim ruling might well be required to preserve some prevailing conditions for the purpose of being able to adjudicate them – The Board found that BACU had successfully met the three factors necessary for the granting of interim relief: (1) BACU has put forward a defence to the s. 149 complaint that makes out a strong *prima facie* case; (2) the parent union will suffer irreparable harm in that if the relief is not granted, their ability to participate meaningfully in the litigation will be nullified; and (3) the balance of labour relations harm points to maintaining the integrity of the Board's processes until the substantive relief can be adjudicated – Furthermore, Local 31 appeared to have taken the law into its own hands rather than have the Board or the courts deal with its dispute with BACU when it transferred its assets to a new membership trust fund – The Board amended its earlier ruling of April 16, 2007 and refrained from making any order with respect to the trust fund; similarly, it made no determinations with respect to other monies held by the various parties in these proceedings – Interim relief granted

MARBLE, TILE & TERRAZZO, LOCAL 31; RE BRICK AND ALLIED CRAFT UNION; RE KERRY WILSON; RE TOM WILLIAMS; RE JOHN HAGGIS; RE JOE PLUNKETT; RE CAMERON MACKAY; RE FRANK ROCCA.....

586

Intervenors – Collective Bargaining – Construction Industry – Duty to Bargain in Good Faith – Parties – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL breached s. 17 of the Act – The applicants allege that LEBA and the two other constituent members, by entering into agreements extending the scope of their appendices and subcontracting provisions, have forced a recognition issue to impasse, since PEBAL cannot adopt an agreement entered into by some members that has a direct negative impact on its other members – The Board found that just as there is no duty to bargain in good faith owed to employees, there is no duty owed to the constituent members of PEBAL – The Board further noted that while it is charged with determining the applications or complaints that are filed with it, the Board must be satisfied the applicants do not just have an interest in the matter, but have the legal right to proceed with the complaint – Here the Board found since there is no duty on LEBA to bargain in good faith with the constituent members of PEBAL, the applicants do not have the legal right to assert that LEBA violated the duty to bargain in good faith owed to PEBAL – Finally the Board characterized this matter as one of a complaint about the manner in which two of the five constituent members of PEBAL have dealt with the other three members (and how LEBA has taken advantage of this schism), and not as one encompassed by s. 17 of the Act – Application dismissed

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599

Intervenors – Collective Bargaining – Construction Industry – Interference with employers' organization – Parties – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL interfered in the administration of the employers' organization contrary to s. 71 of the Act – The Board ruled on four preliminary motions raised by the responding parties – First, the Board found that the members of the employers' organization had a direct legal interest in having their organization operate without interference by a trade union and accordingly had standing – Second, the Board declined to determine whether the applicants had pled a *prima facie* case and dismissed the responding parties' motion to dismiss – Third the Board declined to exercise its discretion to refuse to entertain the complaint – Finally, the Board found merit in the responding parties' submissions seeking to defer the matter pending the outcome of an Industrial Inquiry Commission, given that through its mandate the Commission would provide a much better forum for discussing the parties' differences – Adjourned pending release of Commission's report

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606

Judicial Review – Alteration of Jurisdiction – Construction Industry – Natural Justice – Practice and Procedure – The Local alleged that the Board’s decision, finding just cause for the International to assume jurisdiction of the Local over a computer centre construction project in Barrie, should be quashed on a number of grounds – The Board, noting that s. 147(5) operated to stay the assumption of the Local’s jurisdiction, was concerned that a full hearing might render the result inconsequential and moot, since the project was near completion held a two day consultation in accordance with Rule 41, as the situation required a speedy resolution – The Board, having acknowledged that there were facts in dispute, determined there was sufficient uncontested material to permit it to reach an appropriate decision – The Board fashioned a specific remedy placing restrictions and conditions on the International’s transfer of jurisdiction – On judicial review, the court first found that Rule 41 was not *ultra vires*, since there was no improper delegation of authority by the Chair, nor was the rule inconsistent with the scheme of the Act – The court found that the rule sets a standard that must be met before a Vice Chair may exercise their discretion in the circumstances of a particular case, and that the Rule is entirely consistent while noting that the Board “operates in a complex, dynamic, and highly fluid environment where expeditious rulings and informal and accessible procedures are often essential to maintaining the delicate balance between the parties’ various interests” – Second, the court found that the Board did not deny the Local natural justice by proceeding with a consultation rather than a full hearing, since the core value embraced by the *audi alteram partem* maxim was met by the Board: providing the parties with an opportunity to be heard – The court also found it was not patently unreasonable for the Board to have chosen this procedure, since the Board was given the authority to balance the need for complete natural justice on the one hand against expedition on the other – Third, the court found that the Board did not exceed its jurisdiction by making findings of fact in the absence of any evidence, since there was evidence before it, the sufficiency and weight of which were within its exclusive jurisdiction, permitting it to make its decision – Fourth, the court found that the Board did not deny natural justice by failing to provide adequate reasons, since it provided a sufficiently adequate explanation of the process it engaged in, the conclusions it reached, on what it founded those conclusions and the results of its conclusions – Finally the court found that the Board’s decision on the merits was not patently unreasonable: it was a sound and sensible decision in circumstances of acrimony that permitted the appropriate labour relations objective to be achieved, with the least intrusion on the rights of the Local’s members – Application dismissed

IBEW, LOCAL 1739; RE GUILD ELECTRIC LIMITED; RE OLRB

668

Judicial Review – Duty of Fair Representation – Evidence – The standard of review with respect to the merits of the Board’s decision was patent unreasonableness – The court found that the Board’s decision on the merits and in its reconsideration were entirely reasonable: the Board concluded the union could not continue to represent the applicant because of his antagonistic and uncooperative attitude (which was unwarranted); and there was ample evidence on which to base that conclusion – The court also found no denial of procedural fairness in the manner in which the Board proceeded by consultation – A motion to introduce fresh evidence was also dismissed – Application dismissed

STEPHANE VERREAULT; RE UNITED ASSOCIATION OF JOURNEYPERSONS AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE US AND CANADA, TEAMSTERS LOCAL UNION 419; RE OLRB.....

695

Jurisdictional Dispute – Construction Industry Grievance – Remedies – Following a finding that Bondfield had incorrectly assigned drywall taping work to the Painters in the Kingston

area, the Bricklayers sought damages for the breach – The Board canvassed its jurisprudence in JD-related damage claims, where it asks: was the action of the employer substantively unreasonable or was there procedural unreasonableness in the employer's decision-making process? – In this case, the Board found that the assignment by Bondfield clearly violated two important factors that would constitute indicia of unreasonableness (an earlier Board decision; and area practice) – Bondfield argued that its actions were not unreasonable and, in any event, it was not the employer proper since it had subcontracted the taping work to Oakdale, a party bound exclusively to the Painters agreement – The Board held that a work assignment which flies in the face of an unequivocal earlier Board ruling involving the same three parties amounts to second guessing the Board decision and will not be countenanced; a claim for work on the basis of a Board decision in a JD is superior to other claims based on other factors – Grievance allowed; quantum of damages remitted to the parties

BONDFIELD CONSTRUCTION; RE BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 10 AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 10

499

Natural Justice – Alteration of Jurisdiction – Construction Industry – Judicial Review – Practice and Procedure – The Local alleged that the Board's decision, finding just cause for the International to assume jurisdiction of the Local over a computer centre construction project in Barrie, should be quashed on a number of grounds – The Board, noting that s. 147(5) operated to stay the assumption of the Local's jurisdiction, was concerned that a full hearing might render the result inconsequential and moot, since the project was near completion held a two day consultation in accordance with Rule 41, as the situation required a speedy resolution – The Board, having acknowledged that there were facts in dispute, determined there was sufficient uncontested material to permit it to reach an appropriate decision – The Board fashioned a specific remedy placing restrictions and conditions on the International's transfer of jurisdiction – On judicial review, the court first found that Rule 41 was not *ultra vires*, since there was no improper delegation of authority by the Chair, nor was the rule inconsistent with the scheme of the Act – The court found that the rule sets a standard that must be met before a Vice Chair may exercise their discretion in the circumstances of a particular case, and that the Rule is entirely consistent while noting that the Board "operates in a complex, dynamic, and highly fluid environment where expeditious rulings and informal and accessible procedures are often essential to maintaining the delicate balance between the parties' various interests" – Second, the court found that the Board did not deny the Local natural justice by proceeding with a consultation rather than a full hearing, since the core value embraced by the *audi alteram partem* maxim was met by the Board: providing the parties with an opportunity to be heard – The court also found it was not patently unreasonable for the Board to have chosen this procedure, since the Board was given the authority to balance the need for complete natural justice on the one hand against expedition on the other – Third, the court found that the Board did not exceed its jurisdiction by making findings of fact in the absence of any evidence, since there was evidence before it, the sufficiency and weight of which were within its exclusive jurisdiction, permitting it to make its decision – Fourth, the court found that the Board did not deny natural justice by failing to provide adequate reasons, since it provided a sufficiently adequate explanation of the process it engaged in, the conclusions it reached, on what it founded those conclusions and the results of its conclusions – Finally the court found that the Board's decision on the merits was not patently unreasonable: it was a sound and sensible decision in circumstances of acrimony that permitted the appropriate labour relations objective to be achieved, with the least intrusion on the rights of the Local's members – Application dismissed

IBEW, LOCAL 1739; RE GUILD ELECTRIC LIMITED; RE OLRB	668
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Parties – Collective Bargaining – Construction Industry – Duty to Bargain in Good Faith – Intervenor – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL breached s. 17 of the Act – The applicants allege that LEBA and the two other constituent members, by entering into agreements extending the scope of their appendices and subcontracting provisions, have forced a recognition issue to impasse, since PEBAL cannot adopt an agreement entered into by some members that has a direct negative impact on its other members – The Board found that just as there is no duty to bargain in good faith owed to employees, there is no duty owed to the constituent members of PEBAL – The Board further noted that while it is charged with determining the applications or complaints that are filed with it, the Board must be satisfied the applicants do not just have an interest in the matter, but have the legal right to proceed with the complaint – Here the Board found since there is no duty on LEBA to bargain in good faith with the constituent members of PEBAL, the applicants do not have the legal right to assert that LEBA violated the duty to bargain in good faith owed to PEBAL – Finally the Board characterized this matter as one of a complaint about the manner in which two of the five constituent members of PEBAL have dealt with the other three members (and how LEBA has taken advantage of this schism), and not as one encompassed by s. 17 of the Act – Application dismissed

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS ASSOCIATION OF ONTARIO.....	599
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Parties – Collective Bargaining – Construction Industry – Interference with employers' organization – Intervenor – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL interfered in the administration of the employers' organization contrary to s. 71 of the Act – The Board ruled on four preliminary motions raised by the responding parties – First, the Board found that the members of the employers' organization had a direct legal interest in having their organization operate without interference by a trade union and accordingly had standing – Second, the Board declined to determine whether the applicants had pled a *prima facie* case and dismissed the responding parties' motion to dismiss – Third the Board declined to exercise its discretion to refuse to entertain the complaint – Finally, the Board found merit in the responding parties' submissions seeking to defer the matter pending the outcome of an Industrial Inquiry Commission, given that through its mandate the Commission would provide a much better forum for discussing the parties' differences – Adjourned pending release of Commission's report

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS ASSOCIATION OF ONTARIO.....	606
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Practice and Procedure – Construction Industry – Termination – Timeliness – The application was received by the Board on May 4, 2007, having been delivered to a courier on May 2, 2007 – The Board held that as a rule an application is filed on the day the Board actually

receives it, the only exception occurring in the construction industry where certifications and terminations given to Priority Courier will be deemed to have been filed on the date they were given to the courier (Rule 24.2) – The applicant in the present case gave his application to a different courier – The Board was not prepared to extend the exception beyond the one contemplated in the Rules – Application dismissed

YORKWOOD HOMES; RE MARK JONES; RE UNIVERSAL WORKERS UNION,
LIUNA LOCAL 183 666

Practice and Procedure – Certification – Construction Industry – Timeliness – The Board finds that in a card-based application for certification, there is no prejudice to the union if the responding party fails to provide the response to the union at the same time it files it with the Board – The response was delivered to the applicant one week after it was due – The Board relieves against the late delivery of the response – Matter continues

LEMMO MASONRY INC.; RE LIUNA LOCAL 527 583

Practice and Procedure – Certification – Construction Industry – Employer – Related Employer – Timeliness – The Board found nothing wrong with the application naming three possible employers as responding parties; the applicant specifically referenced subsection 1(4) and asked that the certificate name all three entities – The responding party filed its response five days late but asked the Board to exercise its discretion to accept the late-filed information in accordance with the ruling of the Divisional Court in *Maystar* (see [2007] OLRB Rep. March/April 459) – The Board examined possible criteria for the exercise of discretion: the nature of certification applications and the need for speed in their determination; the reasons for the late filing; prejudice to the applicant – The Board finds that prejudice is present in every case, and will be the same in every case – In the circumstances of this case, the Board does not exercise its discretion to accept the late-filed information – The applicant delivered its materials to three fax machines for the three employers; personal delivery is not a requirement of the Act or the Board's Rules – Time extension allowed for response to related employer allegations – Matter continues

REIDS UPTOWN HOMES, REIDCO NORTH LTD., S.R. PROPERTIES INC.; RE
LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 633

Practice and Procedure – Evidence – Health and Safety – The Board ruled on the admissibility of evidence in this health and safety appeal (for a history of the matter, see [2006] OLRB Rep. September/October 648) – The Board held that since the orders under appeal dated from 2002, only the evidence available before the issuance of the orders would be admissible – To allow the inclusion of subsequent events could condone conduct that, absent the appeal, would have constituted a contravention of the Act – Since no orders were issued regarding work done after 2002, the Board had no authority to adjudicate what happened after that date – Matter continues

1353837 ONTARIO INC./LAWRENCE RYAN; RE PETER MARTIN AND JOHN
DENNIS, INSPECTORS 481

Practice and Procedure – Termination – Timeliness – This application under s. 66 of the Act, was filed one year to the date of the signing of the voluntary recognition agreement – The responding party argued that it was out of time, and that the applicant was not at work in the bargaining unit on the date of application – The Board found that an application under s. 66 of the Act does not fall within the construction provisions of the Board's Rules, so Rule 3.4 applies, rather than Rule 24.2 – The applicant used the services of a

private courier (not Priority Post), so the application date was the date the materials were received by the Board – The applicant was on leave from the employer on the date of application, and therefore not at work in the bargaining unit on the filing date – For all of these reasons, the application was dismissed

DRYDEN ELECTRIX INC.; RE JOSEPH RYAN OLIVERSON; RE IBEW AND THE IBEW CONSTRUCTION COUNCIL OF ONTARIO.....

537

Practice and Procedure – Alteration of Jurisdiction – Construction Industry – Judicial Review –

Natural Justice – The Local alleged that the Board’s decision, finding just cause for the International to assume jurisdiction of the Local over a computer centre construction project in Barrie, should be quashed on a number of grounds – The Board, noting that s. 147(5) operated to stay the assumption of the Local’s jurisdiction, was concerned that a full hearing might render the result inconsequential and moot, sine the project was near completion held a two day consultation in accordance with Rule 41, as the situation required a speedy resolution – The Board, having acknowledged that there were facts in dispute, determined there was sufficient uncontested material to permit it to reach an appropriate decision – The Board fashioned a specific remedy placing restrictions and conditions on the International’s transfer of jurisdiction – On judicial review, the court first found that Rule 41 was not *ultra vires*, since there was no improper delegation of authority by the Chair, nor was the rule inconsistent with the scheme of the Act – The court found that the rule sets a standard that must be met before a Vice Chair may exercise their discretion in the circumstances of a particular case, and that the Rule is entirely consistent while noting that the Board “operates in a complex, dynamic, and highly fluid environment where expeditious rulings and informal and accessible procedures are often essential to maintaining the delicate balance between the parties’ various interests” – Second, the court found that the Board did not deny the Local natural justice by proceeding with a consultation rather than a full hearing, since the core value embraced by the *audi alteram partem* maxim was met by the Board: providing the parties with an opportunity to be heard – The court also found it was not patently unreasonable for the Board to have chosen this procedure, since the Board was given the authority to balance the need for complete natural justice on the one hand against expedition on the other – Third, the court found that the Board did not exceed its jurisdiction by making findings of fact in the absence of any evidence, since there was evidence before it, the sufficiency and weight of which were within its exclusive jurisdiction, permitting it to make its decision – Fourth, the court found that the Board did not deny natural justice by failing to provide adequate reasons, since it provided a sufficiently adequate explanation of the process it engaged in, the conclusions it reached, on what it founded those conclusions and the results of its conclusions – Finally the court found that the Board’s decision on the merits was not patently unreasonable: it was a sound and sensible decision in circumstances of acrimony that permitted the appropriate labour relations objective to be achieved, with the least intrusion on the rights of the Local’s members – Application dismissed

IBEW, LOCAL 1739; RE GUILD ELECTRIC LIMITED; RE OLRB

668

Prima Facie Case – Related Employer – Sale of Business – The union sought a Board order consolidating its bargaining units of editorial employees as a result of the corporate restructuring and centralization initiatives undertaken by Sun Media’s three newspapers – The responding parties asked the Board to dismiss the application under rule 39 – The Board found the staffing of non-union jobs in the Centres of Excellence with former bargaining unit employees did not constitute the sale of a business or part thereof – The Board then decided, assuming the responding parties were related employers, that there

was no possibility it would grant the extraordinary remedy of bargaining unit consolidation for the following reasons: first, the consolidation would create a bargaining unit covering three municipalities, which runs contrary to the Board's usual practice; second, the union acknowledged the sharing of editorial content in the past and yet it has been content to organize on a newspaper by newspaper basis; third, the union can challenge the restructuring through grievances, an unfair labour practice complaint or in collective bargaining – Sale of business dismissed; declarations made

SUN MEDIA CORPORATION; RE COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION OF CANADA LOCAL 87-M SOUTHERN ONTARIO
NEWSMEDIA GUILD

648

Public Sector Labour Relations Transition Act, 1997 – Bargaining Unit – Five community care access centres (CCACs) were merged – OPSEU applied to the Board for a determination of the appropriate bargaining agent and bargaining unit(s) – The applicant represents 190 of the affected employees in the single largest predecessor bargaining unit – The applicant asserts that a single “all employee” bargaining unit is appropriate, whereas the employer, CUPE and ONA assert that there should be two bargaining units: one comprised of professional employees and the other of office and clerical employees – The Board noted that both options are consistent with the purpose of s.22(7) of the Act – Finding that either a single unit or a two-unit configuration could comfortably obtain for the newly-configured CCAC, the Board signaled its preference to maintain the *status quo* where there are existing, fully functional collective bargaining relationships – In this case four of five CCACs, or approximately sixty-five per cent of employees, operated under a two bargaining unit system – Two bargaining units ordered (*Editors' note*: Following the counting of the ballots, OPSEU won the office and clerical unit; ONA became the bargaining agent for the professional employees: decision dated May 12, 2007)

HAMILTON NIAGARA HALDIMAND BRANT COMMUNITY CARE ACCESS
CENTRE; RE OPSEU; RE HAMILTON COMMUNITY CARE ACCESS CENTRE; RE
BRANT COMMUNITY CARE ACCESS CENTRE; RE COMMUNITY CARE
ACCESS CENTRE NIAGARA; RE COMMUNITY CARE ACCESS CENTRE OF
HALTON; RE HALDIMAND-NORFOLK COMMUNITY CARE ACCESS CENTRE;
RE CUPE AND ITS LOCAL 4700; RE ONTARIO NURSES ASSOCIATION

547

Related Employer – Certification – Construction Industry – Employer – Practice and Procedure – Timeliness – The Board found nothing wrong with the application naming three possible employers as responding parties: the applicant specifically referenced subsection 1(4) and asked that the certificate name all three entities – The responding party filed its response five days late but asked the Board to exercise its discretion to accept the late-filed information in accordance with the ruling of the Divisional Court in *Maystar* (see [2007] OLRB Rep. March/April 459) – The Board examined possible criteria for the exercise of discretion: the nature of certification applications and the need for speed in their determination; the reasons for the late filing; prejudice to the applicant – The Board finds that prejudice is present in every case, and will be the same in every case – In the circumstances of this case, the Board does not exercise its discretion to accept the late-filed information – The applicant delivered its materials to three fax machines for the three employers; personal delivery is not a requirement of the Act or the Board's Rules – Time extension allowed for response to related employer allegations – Matter continues

REIDS UPTOWN HOMES, REIDCO NORTH LTD., S.R. PROPERTIES INC.; RE
LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL

633

Related Employer – *Prima Facie* Case – Sale of Business – The union sought a Board order consolidating its bargaining units of editorial employees as a result of the corporate restructuring and centralization initiatives undertaken by Sun Media's three newspapers – The responding parties asked the Board to dismiss the application under rule 39 – The Board found the staffing of non-union jobs in the Centres of Excellence with former bargaining unit employees did not constitute the sale of a business or part thereof – The Board then decided, assuming the responding parties were related employers, that there was no possibility it would grant the extraordinary remedy of bargaining unit consolidation for the following reasons: first, the consolidation would create a bargaining unit covering three municipalities, which runs contrary to the Board's usual practice; second, the union acknowledged the sharing of editorial content in the past and yet it has been content to organize on a newspaper by newspaper basis; third, the union can challenge the restructuring through grievances, an unfair labour practice complaint or in collective bargaining – Sale of business dismissed; declarations made

SUN MEDIA CORPORATION; RE COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION OF CANADA LOCAL 87-M SOUTHERN ONTARIO
NEWSMEDIA GUILD

648

Related Employer – Sale of a Business – CUPE alleged that the City of Ottawa and the other responding parties were a single employer or, alternatively, that there had been a sale of business under the Act because a significant portion of the summer season bargaining unit work was being conducted by the companies on contract with the city – The union was unable, however, to identify any bargaining unit members who had lost work opportunities, been laid off or terminated because of the contracting arrangements – The employer brought a motion to have the application dismissed, or deferred to arbitration, arguing that there had been no disposition of any functional economic vehicle or part thereof by the city, that the city's existing relationships with both CUPE and the contractors permitted contracting out, and that any operational control over the work performed by the contractors was to be expected given the city's mandate to provide municipal services – Motion granted, application dismissed

CITY OF OTTAWA; RE CUPE, LOCAL 503; RE B & G GORHAM
CONSTRUCTION INC.; RE ROB BURNS OPERATING AS BURNS LANDSCAPE
MAINTENANCE, CONCORDIA PAVING LTD.; RE THOMAS CAVANAGH
CONSTRUCTION LTD.; RE EXEL CONTRACTING INC.; JAKE'S LAWN CARE;
RE KERN'S PROPERTY MAINTENANCE; RE LANDTECH INC.; RE LAURENT
LEBLANC LTD.; RE M.A. THOMPSON CARTAGE LTD.; RE MALCOLM MORRIS
OPERATING AS MAC MORRIS CARTAGE & EQUIPMENT RENTALS AND MAC
& MIKE MORRIS EQUIPMENT RENTALS, MOUNTAINVIEW TURF FARM LTD.;
RE YANNICK BRULE OPERATING AS NEED A CUT SERVICES, PROP-COM
MANAGEMENT INC.; RE QUINN & COMPANY AND KANATA WEST
LANDSCAPE MAINTENANCE

516

Remedies – Certification – Certification where Act Contravened – Construction Industry – Representation Vote – Unfair Labour Practice – The union brought an application for certification and remedial certification under s. 11, alleging that the employer had contravened the Act by terminating a union organizer, thereby preventing the union from being able to demonstrate it had more than 40% membership support – The employer, solely owned by Normoyle, had four employees during the relevant time period – McCarthy, the inside union organizer, was terminated nine days after being hired, and the day after Normoyle discovered there was a union organizing drive – The Board did not accept that McCarthy was fired for performance deficiencies, for being slow in his work

and for being late – The Board noted that the employer did not warn or reprimand McCarthy for these matters at the time they occurred, nor was he allowed any opportunity to change – The Board found the totality of the performance issues were of no consequence to Normoyle at the time they occurred because he did not act on them – The Board further found that the timing of the termination, one day after Normoyle discovered that McCarthy was involved in the union organizing the work place, was significant in light of the lack of employer-demonstrated reasons for termination – The Board found that McCarthy was fired because he was behind the union organizing drive and this was a breach of the Act – The Board then turned to the appropriate remedy under s. 11 recognizing that it can only certify without a representation vote where “no other remedy would be sufficient to counter the effects of the contravention” – The Board found that the employees could not freely express their wishes in a representation vote in the context of a discharge of an individual associated with union activity – The employer’s actions served two purposes: stopping the union organizer from accessing employees and sending a message to employees that support for the union meant job loss – The Board found that a representation vote with ancillary relief would be insufficient to counter this effect – The union’s application under s. 11 was granted and the union was certified – Application granted

1443760 ONTARIO INC. OPERATING AS SWING STAGE EQUIPMENT RENTALS
OTTAWA; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, LOCAL 93

485

Remedies – Construction Industry Grievance – Jurisdictional Dispute – Following a finding that Bondfield had incorrectly assigned drywall taping work to the Painters in the Kingston area, the Bricklayers sought damages for the breach – The Board canvassed its jurisprudence in JD-related damage claims, where it asks: was the action of the employer substantively unreasonable or was there procedural unreasonableness in the employer’s decision-making process? – In this case, the Board found that the assignment by Bondfield clearly violated two important factors that would constitute indicia of unreasonableness (an earlier Board decision; and area practice) – Bondfield argued that its actions were not unreasonable and, in any event, it was not the employer proper since it had subcontracted the taping work to Oakdale, a party bound exclusively to the Painters agreement – The Board held that a work assignment which flies in the face of an unequivocal earlier Board ruling involving the same three parties amounts to second guessing the Board decision and will not be countenanced; a claim for work on the basis of a Board decision in a JD is superior to other claims based on other factors – Grievance allowed; quantum of damages remitted to the parties

BONDFIELD CONSTRUCTION; RE BRICK AND ALLIED CRAFT UNION OF
CANADA, LOCAL 10 AND INTERNATIONAL UNION OF BRICKLAYERS AND
ALLIED CRAFTWORKERS, LOCAL 10

499

Remedies – Employee – Interference with Trade Union – Unfair Labour Practice – The collective agreement between the University and YUSA included eligibility to participate in a pension plan and post-retirement benefits – The University, arguing retirees were not employees, refused to provide YUSA with the names and addresses of persons who had retired from the University and had been employed in the bargaining unit represented by YUSA immediately prior to their retirement – The Board did not find it necessary to determine whether retirees were “employees” for at least some purposes of the Act – The Board found as long as it was arguable that YUSA had an obligation or the right to pursue a grievance respecting the continued provision of benefits to retirees in accordance with the collective agreement provisions, the denial of information to it

amounted to an interference with its administration, contrary to section 70 – Declaration and direction that information be provided

YORK UNIVERSITY; RE YORK UNIVERSITY STAFF ASSOCIATION

658

Representation Vote – Certification – Certification where Act Contravened – Construction Industry – Remedies – Unfair Labour Practice – The union brought an application for certification and remedial certification under s. 11, alleging that the employer had contravened the Act by terminating a union organizer, thereby preventing the union from being able to demonstrate it had more than 40% membership support – The employer, solely owned by Normoyle, had four employees during the relevant time period – McCarthy, the inside union organizer, was terminated nine days after being hired, and the day after Normoyle discovered there was a union organizing drive – The Board did not accept that McCarthy was fired for performance deficiencies, for being slow in his work and for being late – The Board noted that the employer did not warn or reprimand McCarthy for these matters at the time they occurred, nor was he allowed any opportunity to change – The Board found the totality of the performance issues were of no consequence to Normoyle at the time they occurred because he did not act on them – The Board further found that the timing of the termination, one day after Normoyle discovered that McCarthy was involved in the union organizing the work place, was significant in light of the lack of employer-demonstrated reasons for termination – The Board found that McCarthy was fired because he was behind the union organizing drive and this was a breach of the Act – The Board then turned to the appropriate remedy under s. 11 recognizing that it can only certify without a representation vote where “no other remedy would be sufficient to counter the effects of the contravention” – The Board found that the employees could not freely express their wishes in a representation vote in the context of a discharge of an individual associated with union activity – The employer’s actions served two purposes: stopping the union organizer from accessing employees and sending a message to employees that support for the union meant job loss – The Board found that a representation vote with ancillary relief would be insufficient to counter this effect – The union’s application under s. 11 was granted and the union was certified – Application granted

1443760 ONTARIO INC. OPERATING AS SWING STAGE EQUIPMENT RENTALS
OTTAWA; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, LOCAL 93

485

Reprisal – Discharge – Health and Safety – The applicant complained that she had been discharged for raising health and safety concerns associated with some renovations undertaken by the employer – The Board found the employer had addressed the employee’s concerns in several ways, including changing the employee’s shift – The Board held that the applicant had simply decided to move on to a job she knew was available to her, and wished to take advantage of what had transpired in the workplace to seek a monetary benefit – Application dismissed

IVY VETERINARY SERVICES; RE KRISTINE NEVILLE; RE DR. CATHY EMMS...

563

Sale of a Business – Related Employer – CUPE alleged that the City of Ottawa and the other responding parties were a single employer or, alternatively, that there had been a sale of business under the Act because a significant portion of the summer season bargaining unit work was being conducted by the companies on contract with the city – The union was unable, however, to identify any bargaining unit members who had lost work opportunities, been laid off or terminated because of the contracting arrangements – The

employer brought a motion to have the application dismissed, or deferred to arbitration, arguing that there had been no disposition of any functional economic vehicle or part thereof by the city, that the city's existing relationships with both CUPE and the contractors permitted contracting out, and that any operational control over the work performed by the contractors was to be expected given the city's mandate to provide municipal services – Motion granted, application dismissed

CITY OF OTTAWA; RE CUPE, LOCAL 503; RE B & G GORHAM CONSTRUCTION INC.; RE ROB BURNS OPERATING AS BURNS LANDSCAPE MAINTENANCE, CONCORDIA PAVING LTD.; RE THOMAS CAVANAGH CONSTRUCTION LTD.; RE EXEL CONTRACTING INC.; JAKE'S LAWN CARE; RE KERN'S PROPERTY MAINTENANCE; RE LANDTECH INC.; RE LAURENT LEBLANC LTD.; RE M.A. THOMPSON CARTAGE LTD.; RE MALCOLM MORRIS OPERATING AS MAC MORRIS CARTAGE & EQUIPMENT RENTALS AND MAC & MIKE MORRIS EQUIPMENT RENTALS, MOUNTAINVIEW TURF FARM LTD.; RE YANNICK BRULE OPERATING AS NEED A CUT SERVICES, PROP-COM MANAGEMENT INC.; RE QUINN & COMPANY AND KANATA WEST LANDSCAPE MAINTENANCE

516

Sale of Business – *Prima Facie* Case – Related Employer – The union sought a Board order consolidating its bargaining units of editorial employees as a result of the corporate restructuring and centralization initiatives undertaken by Sun Media's three newspapers – The responding parties asked the Board to dismiss the application under rule 39 – The Board found the staffing of non-union jobs in the Centres of Excellence with former bargaining unit employees did not constitute the sale of a business or part thereof – The Board then decided, assuming the responding parties were related employers, that there was no possibility it would grant the extraordinary remedy of bargaining unit consolidation for the following reasons: first, the consolidation would create a bargaining unit covering three municipalities, which runs contrary to the Board's usual practice; second, the union acknowledged the sharing of editorial content in the past and yet it has been content to organize on a newspaper by newspaper basis; third, the union can challenge the restructuring through grievances, an unfair labour practice complaint or in collective bargaining – Sale of business dismissed; declarations made

SUN MEDIA CORPORATION; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA LOCAL 87-M SOUTHERN ONTARIO NEWSMEDIA GUILD

648

Status – Certification – Employee – The Board examined the position of "inventory clerk" or "auditor" for purposes of certification of a clerical unit of the employer's employees – The parties had earlier agreed to alter the recognition clause of the employer's production unit because the auditors were supervisors within the meaning of the bargaining unit description – In the current application the union sought to have the auditors excluded either because they were supervisors or because they performed managerial functions within the meaning of s. 1(3) of the Act – The Board held that since the parties had agreed the auditors exercised supervisory functions so as to be excluded from the production unit, and there was no material change in their status prior to the instant application, they remained supervisors within the meaning of the clerical bargaining unit – Status determined

PENSKE LOGISTICS; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 880

616

Termination – Practice and Procedure – Timeliness – This application under s. 66 of the Act, was filed one year to the date of the signing of the voluntary recognition agreement – The responding party argued that it was out of time, and that the applicant was not at work in the bargaining unit on the date of application – The Board found that an application under s. 66 of the Act does not fall within the construction provisions of the Board's Rules, so Rule 3.4 applies, rather than Rule 24.2 – The applicant used the services of a private courier (not Priority Post), so the application date was the date the materials were received by the Board – The applicant was on leave from the employer on the date of application, and therefore not at work in the bargaining unit on the filing date – For all of these reasons, the application was dismissed

DRYDEN ELECTRIX INC.; RE JOSEPH RYAN OLIVERSON; RE IBEW AND THE
IBEW CONSTRUCTION COUNCIL OF ONTARIO.....

537

Termination – Construction Industry – Practice and Procedure – Timeliness – The application was received by the Board on May 4, 2007, having been delivered to a courier on May 2, 2007 – The Board held that as a rule an application is filed on the day the Board actually receives it, the only exception occurring in the construction industry where certifications and terminations given to Priority Courier will be deemed to have been filed on the date they were given to the courier (Rule 24.2) – The applicant in the present case gave his application to a different courier – The Board was not prepared to extend the exception beyond the one contemplated in the Rules – Application dismissed

YORKWOOD HOMES; RE MARK JONES; RE UNIVERSAL WORKERS UNION,
LIUNA LOCAL 183

666

Timeliness – Certification – Construction Industry – Employer – Practice and Procedure – Related Employer – The Board found nothing wrong with the application naming three possible employers as responding parties: the applicant specifically referenced subsection 1(4) and asked that the certificate name all three entities – The responding party filed its response five days late but asked the Board to exercise its discretion to accept the late-filed information in accordance with the ruling of the Divisional Court in *Maystar* (see [2007] OLRB Rep. March/April 459) – The Board examined possible criteria for the exercise of discretion: the nature of certification applications and the need for speed in their determination; the reasons for the late filing; prejudice to the applicant – The Board finds that prejudice is present in every case, and will be the same in every case – In the circumstances of this case, the Board does not exercise its discretion to accept the late-filed information – The applicant delivered its materials to three fax machines for the three employers; personal delivery is not a requirement of the Act or the Board's Rules – Time extension allowed for response to related employer allegations – Matter continues

REIDS UPTOWN HOMES, REIDCO NORTH LTD., S.R. PROPERTIES INC.; RE
LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL

633

Timeliness – Certification – Construction Industry – Practice and Procedure – The Board finds that in a card-based application for certification, there is no prejudice to the union if the responding party fails to provide the response to the union at the same time it files it with the Board – The response was delivered to the applicant one week after it was due – The Board relieves against the late delivery of the response – Matter continues

LEMMO MASONRY INC.; RE LIUNA LOCAL 527

583

Timeliness – Construction Industry – Practice and Procedure – Termination – The application was received by the Board on May 4, 2007, having been delivered to a courier on May 2, 2007 – The Board held that as a rule an application is filed on the day the Board actually receives it, the only exception occurring in the construction industry where certifications and terminations given to Priority Courier will be deemed to have been filed on the date they were given to the courier (Rule 24.2) – The applicant in the present case gave his application to a different courier – The Board was not prepared to extend the exception beyond the one contemplated in the Rules – Application dismissed

YORKWOOD HOMES; RE MARK JONES; RE UNIVERSAL WORKERS UNION,
LIUNA LOCAL 183

666

Timeliness – Practice and Procedure – Termination – This application under s. 66 of the Act, was filed one year to the date of the signing of the voluntary recognition agreement – The responding party argued that it was out of time, and that the applicant was not at work in the bargaining unit on the date of application – The Board found that an application under s. 66 of the Act does not fall within the construction provisions of the Board's Rules, so Rule 3.4 applies, rather than Rule 24.2 – The applicant used the services of a private courier (not Priority Post), so the application date was the date the materials were received by the Board – The applicant was on leave from the employer on the date of application, and therefore not at work in the bargaining unit on the filing date – For all of these reasons, the application was dismissed

DRYDEN ELECTRIX INC.; RE JOSEPH RYAN OLIVERSON; RE IBEW AND THE
IBEW CONSTRUCTION COUNCIL OF ONTARIO.....

537

Trade Union – Collective Agreement – Duty of Fair Representation – The six applicants, members of the respondent trade union, CHCW, had filed lay off grievances that were scheduled for arbitration – During a displacement campaign by OPSEU, the members were advised that their grievances would be withdrawn should the members vote for OPSEU – OPSEU was successful and, prior to OPSEU providing a letter to CHCW that OPSEU would act as agent and incur all costs for the grievances, CHCW withdrew the grievances – The Board first found that CHCW's campaign statement--that it would withdraw the grievances--was not a breach of s. 76, since its actions were a reasonable interpretation of its obligations on the loss of representation rights – The Board also found that CHCW's withdrawal of the grievances, prior to hearing from OPSEU, did not breach s. 74 since nothing required a defeated incumbent union to "keep alive" outstanding grievances against the possibility that the incoming union might seek its permission to act as agent with proper cost protection – Accordingly the Board found, in the absence of any obligation by OPSEU to request agency for carriage of the grievances or any reasonable expectation that it would do so, that the withdrawal of the grievances accorded with CHCW's institutional interests and were not a breach of the Act – Finally, once CHCW received OPSEU's letter, the Board found CHCW's failure to take any action to retract its withdrawal could not be a breach of its duty since it could no longer unilaterally accomplish this – Application dismissed

CORPORATION OF THE COUNTY OF GREY OPERATING AS GREY GABLES
COUNTY HOME FOR THE AGED, THE; RE PEARL LONG ET AL; RE CANADIAN
HEALTH CARE WORKERS UNION

530

Trusteeship – Interim Relief – Local 31 filed a s. 149 application challenging the imposition of supervision over it by BACU – BACU sought interim relief from the Board to be able to continue its trusteeship because of the Local's alleged failure to resist displacement

overtures brought by another union – The Board held that s. 98(1)(a) gave it the authority to do what was necessary to preserve its processes; an interim ruling might well be required to preserve some prevailing conditions for the purpose of being able to adjudicate them – The Board found that BACU had successfully met the three factors necessary for the granting of interim relief: (1) BACU has put forward a defence to the s. 149 complaint that makes out a strong *prima facie* case; (2) the parent union will suffer irreparable harm in that if the relief is not granted, their ability to participate meaningfully in the litigation will be nullified; and (3) the balance of labour relations harm points to maintaining the integrity of the Board's processes until the substantive relief can be adjudicated – Furthermore, Local 31 appeared to have taken the law into its own hands rather than have the Board or the courts deal with its dispute with BACU when it transferred its assets to a new membership trust fund – The Board amended its earlier ruling of April 16, 2007 and refrained from making any order with respect to the trust fund; similarly, it made no determinations with respect to other monies held by the various parties in these proceedings – Interim relief granted

MARBLE, TILE & TERRAZZO, LOCAL 31; RE BRICK AND ALLIED CRAFT UNION; RE KERRY WILSON; RE TOM WILLIAMS; RE JOHN HAGGIS; RE JOE PLUNKETT; RE CAMERON MACKAY; RE FRANK ROCCA.....

586

Unfair Labour Practice – Certification – Certification where Act Contravened – Construction Industry – Remedies – Representation Vote – The union brought an application for certification and remedial certification under s. 11, alleging that the employer had contravened the Act by terminating a union organizer, thereby preventing the union from being able to demonstrate it had more than 40% membership support – The employer, solely owned by Normoyle, had four employees during the relevant time period – McCarthy, the inside union organizer, was terminated nine days after being hired, and the day after Normoyle discovered there was a union organizing drive – The Board did not accept that McCarthy was fired for performance deficiencies, for being slow in his work and for being late – The Board noted that the employer did not warn or reprimand McCarthy for these matters at the time they occurred, nor was he allowed any opportunity to change – The Board found the totality of the performance issues were of no consequence to Normoyle at the time they occurred because he did not act on them – The Board further found that the timing of the termination, one day after Normoyle discovered that McCarthy was involved in the union organizing the work place, was significant in light of the lack of employer-demonstrated reasons for termination – The Board found that McCarthy was fired because he was behind the union organizing drive and this was a breach of the Act – The Board then turned to the appropriate remedy under s. 11 recognizing that it can only certify without a representation vote where “no other remedy would be sufficient to counter the effects of the contravention” – The Board found that the employees could not freely express their wishes in a representation vote in the context of a discharge of an individual associated with union activity – The employer's actions served two purposes: stopping the union organizer from accessing employees and sending a message to employees that support for the union meant job loss – The Board found that a representation vote with ancillary relief would be insufficient to counter this effect – The union's application under s. 11 was granted and the union was certified – Application granted

1443760 ONTARIO INC. OPERATING AS SWING STAGE EQUIPMENT RENTALS OTTAWA; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93

485

Unfair Labour Practice – Collective Bargaining – Construction Industry – Duty to Bargain in Good Faith – Intervenor – Parties – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL breached s. 17 of the Act – The applicants allege that LEBA and the two other constituent members, by entering into agreements extending the scope of their appendices and subcontracting provisions, have forced a recognition issue to impasse, since PEBAL cannot adopt an agreement entered into by some members that has a direct negative impact on its other members – The Board found that just as there is no duty to bargain in good faith owed to employees, there is no duty owed to the constituent members of PEBAL – The Board further noted that while it is charged with determining the applications or complaints that are filed with it, the Board must be satisfied the applicants do not just have an interest in the matter, but have the legal right to proceed with the complaint – Here the Board found since there is no duty on LEBA to bargain in good faith with the constituent members of PEBAL, the applicants do not have the legal right to assert that LEBA violated the duty to bargain in good faith owed to PEBAL – Finally the Board characterized this matter as one of a complaint about the manner in which two of the five constituent members of PEBAL have dealt with the other three members (and how LEBA has taken advantage of this schism), and not as one encompassed by s. 17 of the Act – Application dismissed

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS ASSOCIATION OF ONTARIO.....

599

Unfair Labour Practice – Collective Bargaining – Construction Industry – Interference with employers' organization – Intervenor – Parties – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL interfered in the administration of the employers' organization contrary to s. 71 of the Act – The Board ruled on four preliminary motions raised by the responding parties – First, the Board found that the members of the employers' organization had a direct legal interest in having their organization operate without interference by a trade union and accordingly had standing – Second, the Board declined to determine whether the applicants had pled a *prima facie* case and dismissed the responding parties' motion to dismiss – Third the Board declined to exercise its discretion to refuse to entertain the complaint – Finally, the Board found merit in the responding parties' submissions seeking to defer the matter pending the outcome of an Industrial Inquiry Commission, given that through its mandate the Commission would provide a much better forum for discussing the parties' differences – Adjourned pending release of Commission's report

ONTARIO MASONRY CONTRACTORS ASSOCIATION; RE CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF ONTARIO; RE SEALANT AND WATERPROOFING ASSOCIATION; RE INDUSTRIAL CONTRACTORS ASSOCIATION OF CANADA; RE CONCRETE FLOOR CONTRACTORS ASSOCIATION OF ONTARIO.....

606

Unfair Labour Practice – Employee – Interference with Trade Union – Remedies – The collective agreement between the University and YUSA included eligibility to participate in a pension plan and post-retirement benefits – The University, arguing retirees were not employees, refused to provide YUSA with the names and addresses of persons who had retired from the University and had been employed in the bargaining unit represented by

YUSA immediately prior to their retirement – The Board did not find it necessary to determine whether retirees were “employees” for at least some purposes of the Act – The Board found as long as it was arguable that YUSA had an obligation or the right to pursue a grievance respecting the continued provision of benefits to retirees in accordance with the collective agreement provisions, the denial of information to it amounted to an interference with its administration, contrary to section 70 – Declaration and direction that information be provided

YORK UNIVERSITY; RE YORK UNIVERSITY STAFF ASSOCIATION

658

1227-06-HS 1353837 Ontario Inc./Lawrence Ryan, Applicant v. Peter Martin and John Dennis, Inspectors, Responding Parties

Evidence – Health and Safety – Practice and Procedure – The Board ruled on the admissibility of evidence in this health and safety appeal (for a history of the matter, see [2006] OLRB Rep. September/October 648) – The Board held that since the orders under appeal dated from 2002, only the evidence available before the issuance of the orders would be admissible – To allow the inclusion of subsequent events could condone conduct that, absent the appeal, would have constituted a contravention of the Act – Since no orders were issued regarding work done after 2002, the Board had no authority to adjudicate what happened after that date – Matter continues

BEFORE: *Peter F. Chauvin*, Vice-Chair.

DECISION OF THE BOARD: May 22, 2007

1. This is an application under section 61(7) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O-1 as amended (the “Act”).

2. This decision pertains only to the issue of the evidence that is admissible in this matter. At the last day of hearing, the Ministry of Labour (“the MOL”) raised a motion requesting that the evidence be restricted to only those events that pertain to the issuance of the Occupational Health and Safety Act Order Nos. 1002954 and 5146365 dated August 1 and 16, 2002 (“the 2002 Orders”). The applicant (“Mr. Ryan”) objected and submitted that evidence regarding events that have occurred since August 2002 to present is also relevant. However, Mr. Ryan stated that he was not prepared to fully respond to that motion at that time and requested an adjournment to prepare. The Board granted the adjournment and gave the parties an opportunity to provide their written submissions on the issue.

The MOL’s Submissions

3. The MOL notes that the statutory deadline for filing this application has long passed and the only reason this application is before the Board is because of Perell, J.’s judgment, which created a special bridge to allow Mr. Ryan to file this application, notwithstanding that the statutory deadline had long passed. The MOL submits that Perell, J.’s judgment requires the Board to adjudicate the application and determine whether the 2002 Orders are correct. The MOL notes that if the Board had adjudicated this application in 2002, it would only have had evidence regarding 2002 to consider. Accordingly, the MOL submits that to comply with Perell, J.’s judgment and to properly adjudicate this matter now, the Board must consider only evidence that pertains to the issuance of the 2002 Orders and that the Board cannot consider evidence regarding events that occurred after August 2002.

4. Furthermore, the MOL submits that on a section 61 appeal the Act also places the Board “in the shoes” of the inspector. In this regard, the MOL relies upon sections 57, 61(1), 61(3.13) and 61(4) of the Act, and submits that the Act prohibits the Board from considering evidence, such as post August 2002 evidence, that the inspector could not have considered in August of 2002.

5. The MOL cites *Re: National Automobile, Aerospace and Agricultural Implement Workers of Canada (C.A.W. – Canada) Local 444*, [1996] O.O.H.S.A.D. No. 36 (June 13, 1996); *United Steelworkers of America, Local 1005*, [1990] O.O.H.S.A.D. No. 2 (January 23, 1990); *K.E. Electrical Services Ltd.*, [2005] O.O.H.S.A.D. No. 143 (September 26, 2005) and *Timmins Police Services Board*, [1999] O.O.H.S.A.D. No. 296 (October 14, 1999) (OLRB) for the principle that the Act requires the Board to look at the same issues, facts and circumstances that the inspector considered.

Mr. Ryan's Submissions

6. Mr. Ryan's submissions pertain largely to the merits of his application, not to the issue of what evidence is admissible. For instance, Mr. Ryan provides two lengthy summaries of the events that have occurred from 2002 to 2006. Also, Mr. Ryan submits numerous arguments that the August 2002 Orders should be set aside because there was no construction project and no owner, constructor or workers of a construction project. Mr. Ryan also makes several other challenges to other aspects of the 2002 Orders. Such arguments will be relevant and will be considered when the Board considers this application on its merits. However, at this point, the Board is considering the preliminary issue of what evidence is admissible in this appeal, not the merits of the application. As such, arguments that pertain only to the merits of this application are not relevant at this point.

7. Mr. Ryan notes that section 61(3.6) states that the parties shall be given full opportunity to present their evidence and to make their submissions. Mr. Ryan submits that Perell, J.'s judgment addresses events in 2003 and 2004 and that those events are critical to defending the motion for contempt. Mr. Ryan notes that the 2002 Orders continue to be in effect and submits that all evidence up to the present time is therefore relevant to determining the validity of the 2002 Orders. Mr. Ryan submits that not considering post August 2002 evidence would contravene section 61(3.6) and could result in the consequences contained in Perell, J.'s Complex Order being imposed unjustly.

8. Mr. Ryan submits that it is the intent of the Perell, J. judgment that the Board consider all challenges to the 2002 Orders to determine whether the 2002 Orders were withdrawn or rescinded, and that all such evidence, including post August 2002 evidence, must be considered to properly adjudicate this matter.

Analysis

9. The answer to the issue lies in the rather complex history of this matter, which is set out in the Board's September 6, 2006 decision in this matter. The relevant aspects of that history can be summarized as follows.

10. Mr. Ryan owns a property in Stratford, Ontario. In the summer of 2002 he was renovating that property. On August 1 and 16, 2002 the MOL issued the 2002 Orders. Mr. Ryan did not appeal the 2002 Orders to the Board. The MOL submits that Mr. Ryan subsequently performed work in violation of the 2002 Orders.

11. In October 2003, there was a fire at the property. The City of Stratford issued an emergency order requiring that parts of the property be demolished. Mr. Ryan gave notice of a

construction project pursuant to the Act. The MOL oversaw the demolition and did not seek to enforce the outstanding 2002 Orders during that demolition work.

12. In June 2004, Mr. Ryan had Glavin Blasting and Coating ("Glavin") do some sandblasting of the property. Mr. Ryan did not inform Glavin of the outstanding 2002 Orders.

13. In July 2004, Mr. Ryan was seen moving debris with a backhoe on the property. The MOL applied, on a without notice basis, under section 60 of the Act, for a permanent injunction restraining Mr. Ryan from violating the 2002 Orders. The affidavit sworn in support of that motion included the events that lead up to the issuance of the 2002 Orders, but did not include the events that occurred in 2003 and 2004. On July 29, 2004 Backhouse, J. issued a permanent injunction ("the injunction") restraining Mr. Ryan from performing work at the property.

14. The MOL submits that Mr. Ryan did not comply with the injunction. The MOL brought a motion requesting that Mr. Ryan be found in contempt of the injunction. Mr. Ryan brought a cross motion requesting that the injunction be set aside. These issues were decided on May 10, 2006 by Perell, J. in *Sophie Dennis, a Director for the purposes of the Occupational Health and Safety Act v. 1353837 Ontario Inc. and Lawrence Ryan*, Court File No. 04-CV-273100CM2 dated May 10, 2006 ("*Dennis v. Ryan*").

15. Perell, J. ruled that the MOL's failure to disclose in the affidavit the events that occurred in 2003 and 2004 amounted to a material non-disclosure and that Backhouse, J. might not have granted the injunction if there had been proper disclosure. However, Perell, J. also noted that the time for Mr. Ryan to appeal the 2002 Orders was long past. To make it possible for Mr. Ryan to appeal the 2002 Orders and also defend the motion for a contempt order, Perell, J. issued what he referred to as a Complex Order in which he allowed the MOL to re-issue "the Orders of the summer of 2002" and allowed Mr. Ryan to appeal to the Board those re-issued 2002 Orders. Perell, J.'s Complex Order then states that if "the Board grants the appeal in whole or in part, the Ministry's motion for a contempt order should be dismissed with no order as to costs and the Respondents' motion to set aside Backhouse J.'s judgment should be allowed without costs". Perell, J. also stated that if "the Board dismisses the appeal, the Ministry's motion for a contempt order should be granted ...".

16. The MOL re-issued the 2002 Orders. However, Mr. Ryan objected, stating that the re-issued 2002 Orders were not exactly the same as the original 2002 Orders. Accordingly, on June 26, 2006 the MOL again re-issued the 2002 Orders, this time by issuing a new Order that simply incorporated the 2002 Orders by reference. Thereafter, Mr. Ryan filed this application appealing those re-issued 2002 Orders.

17. As stated above, the parties disagree over what evidence is relevant to this appeal. The MOL submits that only evidence pertaining to the August 2002 Orders is relevant. Mr. Ryan submits that all evidence of everything that has happened up to today's date is relevant. For the reasons that follow, the Board finds that only the evidence pertaining to the August 2002 Orders is relevant.

18. First, Perell, J.'s Complex Order is quite clear and specific. It allows the MOL to re-issue "the orders of the summer of 2002", and allows Mr. Ryan to appeal those 2002 Orders. If Perell, J. had wanted the MOL or Mr. Ryan to be able to adjudicate the events that occurred after

August 2002, he could have included that in his Complex Order. Perell, J. reviews the 2003 and 2004 events in his Judgment, but does not state that the 2003 and 2004 events will be subject to adjudication by the Board. I take this to have been deliberate, not an unintentional omission. Perell, J.'s judgment allows only that "the orders of the summer of 2002" be reissued and appealed and states, at paragraph 112, that "The best that the Respondents can achieve is the outcome that they would have achieved had they prudently exercised their right of appeal in the first place". It is clear that the intention of Perell, J. was to put the parties back to where they were in the summer of 2002. Re-issuing the 2002 orders and allowing Mr. Ryan to appeal them does this. This also gives Mr. Ryan the opportunity to have the injunction set aside and to have the MOL's motion for a contempt order dismissed.

19. The following passage from Perell, J.'s judgment also makes it clear that Perell, J.'s intention is that the Board is meant to determine only whether the 2002 Orders were lawful orders made under the Act. If they were, Perell, J. states that Mr. Ryan's actions in 2003 and 2004 contravened the 2002 Orders and the injunction:

113. If the Respondents do not appeal, or if they appeal and fail to disturb the Ministry's orders, then in my opinion it would be established that in commissioning the work performed by Glavin Blasting and Coating on the property and in allowing the children and others to work on the property, the Respondents contravened lawful orders made under the *Occupational Health and Safety Act* and they also contravened the injunction granted by Backhouse, J. Accordingly, in either of these circumstances, they should be found liable for contempt, and in my opinion an appropriate penalty would be a fine of \$25,000 for each Respondent.

Again, this passage does not state that the 2003 and 2004 events would be adjudicated by the Board.

20. Second, section 61(1) gives an employer the right to appeal to the Board an order made by an inspector and section 61(4) of the Act gives the Board the authority to substitute its findings for those of the inspector. No orders were issued regarding any work subsequent to August 2002. Accordingly, there is no order for Mr. Ryan to appeal and there is no order for the Board to consider. The Act does not give the Board the authority to adjudicate the events that occurred in 2003 and 2004, and Perell, J.'s judgment does not direct the Board to do so.

21. Third, if post August 2002 evidence were considered, the Board and Mr. Ryan would be considering facts and issues very different from the facts and issues that the inspector considered in August 2002 and very different from the facts and issues that the Board would have considered on a timely appeal of the 2002 Orders. This is inconsistent with the Act and the cases relied upon by the MOL.

22. With regard to section 61(3.6), the parties will be given full opportunity to present their evidence and submissions regarding the facts and issues that are relevant in this matter, as determined above. Section 61(3.6) does not prevent the Board from determining what issues are relevant and what evidence is admissible.

23. Accordingly, this application is an appeal of the re-issued 2002 Orders. That is what Mr. Ryan has been given the right to appeal. Events that occurred after August 2002 will not be considered in determining this application.

2098-06-R; 2099-06-U United Brotherhood of Carpenters and Joiners of America, Local 93, Applicant v. 1443760 Ontario Inc. operating as Swing Stage Equipment Rentals Ottawa, Responding Party

- Certification – Certification where Act Contravened – Construction Industry – Remedies – Representation Vote – Unfair Labour Practice – The union brought an application for certification and remedial certification under s. 11, alleging that the employer had contravened the Act by terminating a union organizer, thereby preventing the union from being able to demonstrate it had more than 40% membership support – The employer, solely owned by Normoyle, had four employees during the relevant time period – McCarthy, the inside union organizer, was terminated nine days after being hired, and the day after Normoyle discovered there was a union organizing drive – The Board did not accept that McCarthy was fired for performance deficiencies, for being slow in his work and for being late – The Board noted that the employer did not warn or reprimand McCarthy for these matters at the time they occurred, nor was he allowed any opportunity to change – The Board found the totality of the performance issues were of no consequence to Normoyle at the time they occurred because he did not act on them – The Board further found that the timing of the termination, one day after Normoyle discovered that McCarthy was involved in the union organizing the work place, was significant in light of the lack of employer-demonstrated reasons for termination – The Board found that McCarthy was fired because he was behind the union organizing drive and this was a breach of the Act – The Board then turned to the appropriate remedy under s. 11 recognizing that it can only certify without a representation vote where “no other remedy would be sufficient to counter the effects of the contravention” – The Board found that the employees could not freely express their wishes in a representation vote in the context of a discharge of an individual associated with union activity – The employer’s actions served two purposes: stopping the union organizer from accessing employees and sending a message to employees that support for the union meant job loss – The Board found that a representation vote with ancillary relief would be insufficient to counter this effect – The union’s application under s. 11 was granted and the union was certified – Application granted

BEFORE: *Marilyn Silverman*, Vice-Chair.

APPEARANCES: *Melissa Kronick*, *Kevin Cameron* and *Adam McCarthy* appeared on behalf of the applicant, *Walter Langley* and *John Normoyle* appeared on behalf of the responding party.

DECISION OF THE BOARD: June 15, 2007

1. Board File No. 2098-06-R is an application for certification filed under the construction industry provisions of the *Labour Relations Act*, 1995, S.O. 1995, c.1, as amended (the “Act”) in which the applicant seeks remedial certification under section 11 of the Act. This application was filed on October 10, 2006. Board File No. 2099-06-U is an application under

section 96 of the Act filed the same day, in which the applicant alleges improper conduct by Swing Stage Equipment Rentals Ottawa ("Swing Stage" or "the company" or "the employer"). The United Brotherhood of Carpenters and Joiners of America, Local 93 ("the Carpenters" or "the union") says that the employer terminated a union organizer in contravention of sections 70, 72 and 76 of the Act. The union says that conduct prevented it from being able to demonstrate that 40% or more of the individuals in the bargaining unit proposed were members of the union on the date the application for certification was filed.

2. The employer denies violations of the Act.

3. The application for certification was filed in respect of the usual Carpenter's bargaining unit of employees in the industrial, commercial and institutional sector of the construction industry and in respect of Board Area 15, which is primarily the Ottawa area. The bargaining unit description is:

all carpenters and carpenters' apprentices employed by the Responding Party in the ICI sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices employed by the Responding Party in all other sectors of the Construction Industry in Ontario Labour Relations Board Area 15 Ottawa, excluding the industrial, commercial and institutional sectors, save and except non-working foremen and persons above the rank of non-working foreman.

4. The company is in the business of erecting scaffolding and swing stages. The purpose of the swing stage equipment is to move up and down high buildings for window cleaning, restorations and caulking work. The company rents out and erects its equipment to companies engaged in such activities. The equipment used by Swing Stage consists of scaffold frames, swing stages and electrical hoists.

5. Swing Stage is solely owned by John Normoyle, who has operated the company for the last 7 years. It is based in a shop in Russell, Ontario. At the time of the application for certification, Mr. Normoyle worked on job sites and employed four other individuals. Those employees were Jay Fagan, Richard Kulba, John Cochrane and Adam McCarthy. Mr. Normoyle and Mr. Fagan gave evidence for the company.

6. Mr. McCarthy was an inside union organizer at Swing Stage. He was terminated by Mr. Normoyle on October 3, 2006 and it is on this termination that the union relies in its request for remedial certification.

7. Mr. Fagan was hired in March 2006. Mr. Kulba was hired in March/April 2006 and Mr. Cochrane in August/September 2006.

8. The facts relevant to this determination spanned 9 days. On September 18, 2006, Mr. McCarthy called Mr. Normoyle for a job. Mr. McCarthy said that he chose this employer for two purposes: to organize the workers of Swing Stage and because he needed a job. At and prior to that time, Mr. McCarthy was in contact with Keith Cameron, an organizer for the union. Mr. McCarthy and Mr. Cameron were attempting to organize Swing Stage's workforce.

Mr. Cameron arranged for the top up of Mr. McCarthy's pay while he was working at Swing Stage. His pay was topped up to the first year apprentice rate under the Carpenter's Provincial collective agreement.

9. During the phone call of September 18, 2006, Mr. Normoyle asked Mr. McCarthy about his previous work experience. Mr. McCarthy told him about the position he had recently held at a company called Swing N' Scaff; a company in the same business as Swing Stage. Mr. McCarthy told Mr. Normoyle that he quit Swing N' Scaff because of working conditions. At the hearing, Mr. McCarthy said that he was terminated from Swing N' Scaff because of his association with the union. He did not tell Mr. Normoyle that reason during their discussion. Mr. Normoyle said that he told Mr. McCarthy that he did not want to inherit another employer's problems. Mr. McCarthy says that Mr. Normoyle asked him if Swing N' Scaff was a unionized company and Mr. McCarthy said it was not. Mr. Normoyle denies having any discussion about Swing N' Scaff which made reference to a union.

10. In any event, Mr. Normoyle was interested enough after the phone call to ask Mr. McCarthy to meet him at a job site the following day. At the meeting, Mr. McCarthy provided Mr. Normoyle with a resumé and spoke of some of his work experience. Mr. Normoyle called Mr. McCarthy later that day and hired him, on a probationary basis to see how well he could perform the work.

11. Mr. McCarthy began work on September 20, 2006. He immediately began speaking to employees about the union and providing written information about the union. He also arranged for two of them to meet with Mr. Cameron after work, but in the end only Mr. Cameron, Mr. McCarthy and one other employee attended that meeting. Mr. McCarthy said there was interest in the union and he and Mr. Cameron discussed options for optimal days that an application for certification could be filed.

12. On that first day, Mr. Normoyle corrected Mr. McCarthy's work in the manner in which he did a "tie back". Mr. Normoyle showed Mr. McCarthy how Swing Stage did a tie back and Mr. McCarthy complied.

13. Both Mr. Normoyle and Mr. Fagan gave evidence about a conversation they had on September 28 or 29 in which they discussed Mr. McCarthy's poor performance to date. Messrs. Normoyle and Fagan referred to Mr. McCarthy improperly doing the "tie back". Mr. McCarthy recalled being told early on in his employment that the way he did the tie back was not the way Mr. Normoyle wanted. None of the three men who gave evidence on this point said that anything happened other than that Mr. McCarthy was shown the "Swing Stage" method of tie back and he did the work in the way required from then on. Mr. Normoyle said that he and Mr. Fagan discussed that Mr. McCarthy was unmotivated.

14. In another incident, Mr. McCarthy was told to eat on his lunch hour when Mr. Normoyle said that he found him sleeping in the car during lunch and eating later on the way to a work site. Mr. McCarthy said he was not sleeping but he agreed that Mr. Normoyle told him to eat during his lunch hour and not on the way to a job site.

15. On October 2, 2006, Mr. McCarthy came to work half an hour late. He said that he was not told to report any earlier on that day, although Mr. Fagan said that he had told

Mr. McCarthy about the early start time. Mr. Normoyle said that he was unhappy with Mr. McCarthy's work pace that morning and although Mr. Normoyle says that Mr. McCarthy was late, Mr. Normoyle did not say anything to him. They had a short exchange about the pace of Mr. McCarthy's work, but the remainder of the work day was uneventful.

16. No warning or reprimands were issued to Mr. McCarthy on any occasion.

17. After work on October 2, 2006, Mr. Normoyle was approached by Messrs. Fagan, Kulba and Cochrane. They told Mr. Normoyle that they had been approached by the union on two different occasions and that they spoke about it amongst themselves and decided they did not want to be unionized. Mr. Normoyle said he asked if Mr. McCarthy was "included" to which Mr. Fagan replied "yes".

18. Early the next morning, October 3, 2006, Mr. Normoyle called Mr. McCarthy and told him not to report to work as it was raining and there would be nothing going out. Mr. McCarthy recalled that it was raining a little bit that morning. Mr. Normoyle did not say anything to Mr. McCarthy about him coming in later that day or the next day. Mr. Normoyle says he did this because Mr. McCarthy had farther to drive than the other men. Each of the other three men worked that day and none were told not to report. Mr. Normoyle said that the weather cleared up and the crew did the work at the scheduled job sites for the full day.

19. That evening Mr. Normoyle called Mr. McCarthy and told him his services were no longer required and he had nothing for him. Mr. Normoyle said that he took this decision because Mr. McCarthy had performance problems, did not have sufficient knowledge of the work and had been half an hour late and slow the day before. Mr. Normoyle also said that the reduced complement of men who worked on October 3, 2006, accomplished as much without Mr. McCarthy as they had with him and so he was not worth keeping in employment. Mr. Normoyle said none of this to Mr. McCarthy when he terminated him. Mr. Normoyle admits that he never fired anyone before for performance issues. No one was hired to replace Mr. McCarthy. Mr. Normoyle denies that he knew that Mr. McCarthy was involved with the union when he terminated him and says no part of the reason for the termination was motivated by Mr. McCarthy's union activity. Mr. Fagan said that Mr. Normoyle did not tell the other employees that Mr. McCarthy was terminated nor did he tell them why, although it must have been clear to everyone that Mr. McCarthy was not at work from October 3, 2006 onward.

20. Mr. Normoyle says that he only learned of Mr. McCarthy's union involvement when these applications were filed on October 10, 2006.

21. Mr. Cameron called Mr. Fagan on October 4, 2006, the day after Mr. McCarthy's termination. Mr. Fagan said that the workers had conducted a vote and did not want the union. There is some discrepancy as to what was said after that. Mr. Cameron testified that he asked Mr. Fagan if the men got a raise and Mr. Fagan said they had not but that they got to keep their jobs. When asked by Mr. Cameron whether the men had gotten a raise, Mr. Fagan recalls denying that but saying they would be able to keep their jobs "as is". When asked in cross examination to clarify what "as is" meant, Mr. Fagan said that if the union had stepped in the place would be run differently.

Submissions of the Parties

22. The company states correctly that the certification application can only succeed if the section 96 complaint succeeds. That is because the applicant acknowledges that it does not have 40% support. The company submits that the case advanced by the union is not enough to convince the Board that a violation occurred. In the alternative, it suggests that ordering a vote with a posting could rectify the breach if one is found.

23. The company relies on the decision in *DeVilbiss (Canada) Ltd.*, [1975] OLRB Rep. September 678, which established a four-part test for assessing whether the Act has been contravened. Those factors are the existence of a pattern of anti-union activity, the extent of the employer's knowledge and employees' involvement, the manner of the discharge and the credibility of the witnesses.

24. On the issue of credibility the company says that the evidence of its witnesses, Messrs. Normoyle and Fagan, should be preferred over that of Mr. McCarthy. It says that Messrs. Normoyle and Fagan were consistent on the material facts and that Mr. McCarthy was not believable. This is bolstered in the employer's view by the fact that Mr. McCarthy's purpose in joining Swing Stage was to organize the company.

25. The employer contends there was no pattern of anti-union activity and that Mr. Normoyle did not even know that Mr. McCarthy was a union organizer at the time of the termination. The employer asserts that Mr. Normoyle was not really concerned or bothered by the information from his three employees that the union had been attempting to organize. The company says that the only reference in that meeting to Mr. McCarthy was whether or not he was "included", which Mr. Fagan answered "yes". The suggestion is that Mr. McCarthy, although absent from the meeting, was "included" in not wanting the union. In order for the union to succeed the employer says that the Board needs to connect that limited knowledge with intent to discharge Mr. McCarthy for union activity, and that to do so is too big a leap.

26. The employer turns next to an assessment of the manner of discharge. Mr. McCarthy was hired on a probationary basis. Mr. Normoyle said he was concerned with Mr. McCarthy's experience and his performance deficiencies as evidenced by the tie back incident. Mr. Normoyle was also concerned that Mr. McCarthy was slow and had been late. The company asserts that Mr. Normoyle was frustrated on the morning of October 2, 2006 because Mr. McCarthy was late and then slow getting the supplies and equipment. The employer points out that it need not have just cause for the termination so long as its motives are devoid of anti-union animus.

27. Finally, on October 3, 2006, it was raining and Mr. Normoyle assessed that that it was not likely that work would be performed that day so he phoned Mr. McCarthy and told him not to come in. That is because of the travel time involved in Mr. McCarthy's coming to work. At the end of the day Mr. Normoyle concluded that there was no advantage to having Mr. McCarthy at work as the day was productive without him.

28. The employer asserts that the union's case rests on coincidence and the timing of discharge, but nothing in the evidence that connects the discharge to union activity.

29. The employer advances an alternative argument. It argues that if I find a violation of the Act, the appropriate remedy is a vote. It refers to a form of notice as described in *Maverick Mechanical Contractors Ltd.*, [1996] OLRB Rep. March/April 289, in which the Board ordered a new vote where a representative for the employer met with employees one on one and asked them to sign a statement opposing the union. The Board found that there were no threats to job security nor a cumulative range of unlawful activity and determined that a vote with an appropriate notice could remedy the breach.

30. The union begins by noting that section 96 contains a reverse onus provision and that the employer must establish that the reasons for the discharge are the only reasons and that they are not tainted by anti-union motive. If the evidence is insufficient to establish that then the Board cannot be satisfied that the decision to terminate was devoid of anti-union animus. It refers to the decision in *Domus Industries Ltd.*, [1994] OLRB Rep. December 1630. The union asserts that there are three ways to assess whether an employer has met that onus: credibility, timing and inferential reasoning. The union argues that in this case, Mr. Normoyle's decision is not devoid of anti-union animus as it was in part, if not totally, because of Mr. McCarthy's union activity.

31. The union asserts that all the conditions of section 11 have been met and that no other remedy but certification would counteract the effects of the violations. It argues that a vote is not an adequate remedy in these circumstances and distinguishes *Maverick*, *supra*, as in that case there were no threats to job security. The union relies on the decision in *Domus*, *supra*, determined under a former remedial certification provision of the Act, where the Board found that a temporary layoff of employees was tainted by anti-union animus and remedied the breach by certification. The union also relies on the decisions in *Pietro Electric Ltd.*, [1997] OLRB Rep. May/June 527, and *Balkan Glass & Aluminum Inc.*, [1996] OLRB Rep. September/October 717, decided under the former section 11 of the Act.

32. On witness credibility, the union says that Mr. Fagan was in a difficult position. He is employed by the company and had to testify in front of his employer whom he knows does not want the union. Mr. McCarthy's evidence should be preferred because his job is not on the line regardless of the outcome of this case.

33. The union points out that the incidents upon which Mr. Normoyle relied in terminating Mr. McCarthy were minor. There were no reprimands to support the employer's reliance on its dissatisfaction with Mr. McCarthy's work. The union contends that this, coupled with the timing of the termination, supports the theory that Mr. McCarthy was terminated for union activity.

34. From what was described at the meeting with the three employees on the afternoon of October 2, 2006, the Board must infer that Mr. Normoyle knew that Mr. McCarthy was responsible for the union drive. That is clear both from that meeting and what occurred the next day: the three employees reported for work, but Mr. McCarthy was told not to attend.

35. The union highlights that when Mr. Normoyle called Mr. McCarthy on the morning of October 3, 2006, all other employees had shown up and he was the only one told not to report to work.

36. In summary, the union says that the company has not met the onus of establishing that no part of Mr. Normoyle's motivation was anti-union. He brought a swift and clear end to the drive by terminating Mr. McCarthy.

37. As to the employer's argument that there was no aggravated and prolonged anti union conduct, the union submits that the discharge of the key organizer is sufficient to call into play the remedial certification section of the Act.

38. The union asks the Board to find that there was a clear violation of sections 70, 72 and 76 of the Act and no way to remedy that breach other than remedial certification under section 11 of the Act. It also seeks reinstatement with full compensation for Mr. McCarthy and a notice posted to employees.

39. The employer distinguishes the cases relied on by the union and says that in the instant case the termination of Mr. McCarthy occurred after the employees expressed their views to Mr. Normoyle in that they had voted and did not want the union. Swing Stage says that there is no evidence of intimidation or coercion on the part of Mr. Normoyle.

Decision

40. The relevant sections of the Act that the union relies on are 70, 72 and 76:

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

...

72. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or

refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

...

76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

...

41. An important feature of this case is the credibility of the witnesses. Messrs. Normoyle and Fagan gave evidence for the company and Messrs. McCarthy and Cameron for the union. In assessing the evidence of the employer witnesses, what primarily emerges is that the evidence of Mr. Normoyle is simply inconsistent with what is most reasonable and likely in the circumstances. It was internally inconsistent. His rendition of the material events and his reasons for what he did do not seem probable. They are inconsistent with the undisputed facts and inconsistent with what makes sense in the circumstances. The evidence of Messrs. McCarthy and Cameron was consistent and believable. When Mr. McCarthy's evidence is inconsistent with that of Mr. Normoyle I prefer the evidence of Mr. McCarthy.

42. I consider first the timing of the termination. Timing alone would not sustain a breach of section 96. But in this case, Mr. Normoyle purportedly relies upon performance issues that occurred before he told Mr. McCarthy not to come to work. The totality of the performance issues were of no consequence to Mr. Normoyle at the time they occurred because he did not act on them. He said he complained to Mr. Fagan, but other than telling Mr. McCarthy how he wanted or did not want him to conduct himself at work, Mr. Normoyle never suggested these events were ever problematic to Mr. McCarthy's continued employment. The only event that followed closely on Mr. Normoyle learning of the union organizing campaign was that Mr. Normoyle called Mr. McCarthy and told him not to attend at work. He was fired later that day.

43. The reasons advanced by the employer for the termination are not persuasive. Mr. Normoyle did not terminate Mr. McCarthy when he did the tie back incorrectly; nor when he ate his lunch at the wrong time, nor when he was half an hour late for work and slow in getting material. On all those occasions Mr. Normoyle did not reprimand Mr. McCarthy either verbally or in writing. He never warned Mr. McCarthy that if he did not pick up the pace he would be fired. Yet, Mr. Normoyle asks the Board to believe that he relied on those events when the last thing that Mr. Normoyle learned before firing Mr. McCarthy was that there is union organizing afoot. Mr. McCarthy had worked for nine days and was terminated for alleged poor performance without any warning or criticism during that time of his performance or allowing him opportunity to correct those alleged deficiencies. I am not suggesting by this that Swing Stage needed to have a just reason for terminating Mr. McCarthy because the employer is correct in that the just cause standard does not apply. But, the reasons advanced by the employer for the discharge of Mr. McCarthy, taken together with the other conduct and facts of this case, are not believable.

44. That brings me to the October 2, 2006 meeting where the employees disclosed the union organizing to Mr. Normoyle. Mr. McCarthy was the most recently hired employee and the only one not present when employees told Mr. Normoyle about the union campaign. Three employees advised that there was a union trying to organize. Only Mr. McCarthy was not at that meeting and when asked about him, Mr. Normoyle was told he was "included". That exchange makes no sense. I have little doubt that either Mr. Normoyle was told directly, or he reasonably assumed from Mr. McCarthy's absence at that meeting, that he was the union organizer. Further, the fact that this conversation is not believable casts additional doubt on Mr. Fagan's testimony.

45. I turn next to the morning of October 3, 2006. Mr. Normoyle says that only Mr. McCarthy was told not to come to work that morning and it was because of the rain. Irrespective of the state of the weather when Mr. Normoyle called Mr. McCarthy, none of the other employees were told not to come to work, and they all worked the full day at job sites for the employer. Mr. Normoyle did not tell Mr. McCarthy to come in if it cleared up, nor did he tell Mr. McCarthy that it was his choice whether or not to drive in and take his chances with the weather. Nor did Mr. Normoyle tell Mr. McCarthy when and where he should next return to work. Accordingly, I do not believe that Mr. Normoyle was motivated by his concern for Mr. McCarthy's commute.

46. Finally, when Mr. Normoyle terminated Mr. McCarthy that evening, Mr. Normoyle told Mr. McCarthy that his services were no longer required and he had no work for him. Mr. Normoyle did not mention the performance problems upon which he says he relies for the termination in this case.

47. The employer suggests also that because Mr. McCarthy was not terminated immediately upon Mr. Normoyle learning of the union drive, but only later in the day and only because of how well the work day had gone without him anti-union animus was not the reason for the termination. I do not accept this proposition. Whether or not Mr. McCarthy was officially terminated on the morning of October 3, 2006, he was not permitted to work from the moment the employer learned of the organizing drive.

48. Mr. Normoyle's denials about anything that would connect him with any knowledge of the union, coupled with the unbelievable explanations that he gave for the salient events, leads me to find that his evidence is not credible.

49. I turn now to the credibility of the evidence of Mr. Fagan. His evidence was tendered to bolster that of Mr. Normoyle in relation to Mr. McCarthy's performance. The employer relies on a conversation on either September 28 and 29, 2006, where they discussed Mr. McCarthy's poor performance. I have considerable doubt as to whether such a conversation occurred. For the reasons expressed above, Mr. Normoyle's evidence is not credible. There is nothing to support that conversation having occurred at that time because it was not acted upon nor was the issue of performance mentioned to Mr. McCarthy when he was later terminated. Even if that conversation did occur, it does not assist the employer because none of the alleged performance deficiencies were brought to Mr. McCarthy's attention at the time they occurred and he was not terminated contemporaneously with those events.

50. In other instances, where Mr. Fagan's evidence does not coincide with that of Messrs. McCarthy and Cameron, I prefer the union's evidence. In other instances, Mr. Fagan's

evidence is simply not believable on the basis of what is most reasonable and likely in the circumstances. And although I find that Mr. Fagan's evidence was not credible on many points, I agree with the union that Mr. Fagan was in an impossible situation. By the time Mr. Fagan spoke to Mr. Cameron and made the comment about keeping his job "as is", Mr. Fagan knew that Mr. McCarthy was no longer working at Swing Stage. In light of those considerations, I am not prepared to accept any of the evidence of Mr. Fagan where it conflicts with that of the union witnesses and where it supports the evidence of Mr. Normoyle, whose evidence I do not accept on the material facts for the reasons stated herein.

51. The employer argues that the termination was one event and not pervasive conduct. The events of Mr. McCarthy's association with Swing Stage spanned nine (9) days. The employer asserts that the event complained of occurred quickly and here not accompanied by a pattern of anti-union conduct.

52. The termination of the union organizer is so severe and immediate as to transcend any notion of pattern. It is a decisive and complete response that serves the purpose for which it was intended – to abruptly and effectively end the organizing campaign. A single act of this kind is sufficient.

53. On the totality of the evidence, having regard to what is most reasonable and probable in the circumstances, in assessing the credibility of the witnesses, and for the reasons described herein, I find that Mr. Normoyle learned that Mr. McCarthy was behind the union organizing drive and he fired him for that reason. Accordingly, I find that Swing Stage contravened sections 70, 72 and 76 of the Act by terminating Mr. McCarthy for union activity.

54. I turn now to the question of remedy. The employer asks me to consider ordering a representation vote instead of remedial certification. Section 11 provides as follows:

11. (1) Subsection (2) applies where an employer, an employers' organization or a person acting on behalf of an employer or an employers' organization contravenes this Act and, as a result,

- (a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or
- (b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.

(2) In the circumstances described in subsection (1), on the application of the trade union, the Board may,

- (a) order that a representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit;
- (b) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or

- (c) certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining if no other remedy would be sufficient to counter the effects of the contravention.
- (3) An order under subsection (2) may be made despite section 8.1 or subsection 10(2).
- (4) On an application made under this section, the Board may consider,
 - (a) the results of a previous representation vote; and
 - (b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

...

55. This is the first case decided under the current provisions of the section 11, but it is not the first time that the Board has addressed the issue of when remedial certification is appropriate. The predecessor sections under which the cases were decided are not materially different than the present section 11 for the purpose of this determination. I have found there to be a serious contravention of the Act by the employer. The union, as a result of that contravention, is unable to demonstrate that 40% or more of the individuals in its proposed bargaining unit appear to be members at the time the application was filed. The union's campaign was effectively destroyed with the termination of Mr. McCarthy.

56. The employer suggests that the campaign was effectively over, the employees expressed their views and there was no support for the union. It says that the campaign was dead before the termination of Mr. McCarthy. I find that it is of no value to speculate on whether the union would have obtained the required support were it not for the company's contraventions. The employer did not allow the drive to take its course and did not allow the employees to exercise a free choice. It cut off that choice by putting job security at issue.

57. Section 11(1)(b) contains the requirements for remedial certification: a) the employer has contravened the Act, which I have found; b) the union was unable to demonstrate its 40% support, which here is agreed by the parties. Section 11(2) then gives the Board choices as to what remedy to apply.

58. I must decide on these facts whether a representation vote along with other remedies such as declarations and time for union meetings and, perhaps, damages, could result in the ascertainment of the true wishes of the employees who are the subject of this application. I can only certify without a representation vote if I find that "no other remedy would be sufficient to counter the effects of the contravention".

59. The Board's case law under predecessor remedial certification provisions is that the Board will generally certify when the contravention involves termination of employees for union activity (see *Domus, supra* and *Pietro, supra*).

60. As the Board said in *Domus, supra*, at paragraph 34:

34. ... In these circumstances, the Board can, in our view, apply section 9.2 [now s.11] of the Act. The employer, through its conduct, has in effect "poisoned the well" by ensuring that the employees at the Queen Street site are unlikely to be able to express a voluntary view on the issue of union representation. Once the well is poisoned in this manner it becomes impossible to ascertain the true wishes of "the employees" as a group, and the legislative remedy provided for in section 9.2 [now s.11] may be applied by the Board. ...

61. Paragraphs 55 and 56 of the *Pietro, supra*, decision state:

55. Threats to the job security of employees or, as here, actual discharges, linked to support for the union have long been considered by the Board to be unfair labour practices which have such a strong and deep rooted impact that even a representation vote in which ballots were confidentially cast would not reflect the true wishes of employees. Indeed, as the Board recently stated in *Wal-Mart Canada Inc.*, [1997] OLRB Rep. Jan./Feb. 141, at paragraph 49 therein:

... This case is a classic example of a situation in which the conduct of the employer changes the question in the minds of the employees at the vote ... from one of union representation to one of "do you want to retain your employment" (see in this regard *Stratton Knitting Mills Limited*, [1979] OLRB Rep. Aug. 801; *Manor Cleaners Limited*, [1982] OLRB Rep. Dec. 1848; *Knob Hill Farms Limited*, [1987] OLRB Dec. 1531; and *Beaver Lumber*, [1992] OLRB Rep. May 553).

56. To similar effect, in the construction industry context, the Board recently stated in *Balkan Glass & Aluminum Inc.*, [1996] OLRB Rep. Sept. 717, at paragraph 21 therein:

... We are satisfied that the nature of the contravention here is such that a representation vote would not likely reflect the true wishes of the employees in the bargaining unit. The Board has in the past automatically certified an applicant where the actions of an employer have been of the nature of threats to close the business should the employees support the union. Here threats such as these were followed by lay-offs designed to convey to employees the direct and immediate cost of their failure to comply with the employer's directions in this respect. The message to employees would be clear: that the employer would actively take steps to ensure that employees were penalized should they support the union, that those steps included immediate discharge, and that a vote for the union would be an invitation to further reprisals. In these circumstances, the Board concludes that the true wishes of employees would not likely be reflected through a representation vote.

...

62. This approach is relevant to the facts of these applications. From the time Mr. Normoyle found out about the organizing drive, Mr. McCarthy never worked at Swing Stage again. The significance of Mr. McCarthy's absence at work on the day following the October 2 meeting could not have been lost on the employees. Mr. Normoyle learned of the campaign and correctly assumed or was advised of Mr. McCarthy's role. Mr. McCarthy immediately lost his job. Under the cloud of this termination, these employees cannot be expected to freely exercise a choice that would reflect their true wishes. Mr. McCarthy was one of four employees, he was the union organizer and the employees knew that and worked together with him. In a small group such as this there is a reasonable concern by employees that the employer will find out if an employee voted for the union and take punitive action against those who do so. This sentiment was reflected in Mr. Fagan's comment about the employees getting to keep their jobs. There was a clear message to employees: if you are involved with the union, you will lose your job. The employer's action violates the most fundamental right of an employee under the Act to freely choose whether or not to become a member of a trade union.

63. As the Board noted in *Domus, supra*, citing the decision in *Zenith Wood Turners Inc.*, [1987] OLRB Rep. Nov. 1443:

10. The evidence establishes that half the bargaining unit was abruptly laid off within hours of the start of the applicant's organizing campaign. While the reason given to employees for the layoffs was lack of work, the timing of the layoffs would have made it clear to employees that they were connected to the organizing drive. This is one of the most serious unfair labour practices in which an employer can engage. The respondents' conduct goes to the core of the economic dependency which is the primary basis for an employee's vulnerability in the workplace. The Board has noted previously in *DI-AL Construction Limited*, [1983] OLRB Rep. Mar. 356 that a discharge is one of the most flagrant means by which an employer can influence employees:

A discharge is one of the most flagrant means by which an employer can hope to dissuade its employees from selecting a trade union as their bargaining agent. The respondent's action in discharging Mr. Holland because of his support for the union would have made it clear to employees, the depth of the respondent's opposition to the union and likely have created concerns among them that if they were also to support the union, it might jeopardize their own employment. In the face of a discharge, I doubt that employees would now be able to freely decide for or against trade union representation. This is particularly so given the small size of the bargaining unit and the respondent's earlier conduct. In these circumstances, I am satisfied that because of the respondent's unlawful conduct, the current true wishes of the employees are not likely to be ascertained in a representation vote. Accordingly, I am of the view that the applicant should be certified pursuant to the provisions of section 8 of the Act.

We find these comments pertinent to the layoffs before us as well, and we note that the Board has found that discharges or layoffs have given rise to a finding that employees' wishes are not likely to be ascertained in a number of

cases: see, for example, *Dylex Limited*, [1977] OLRB Rep. June 357; *Riverdale Frozen Foods Limited*, [1979] OLRB Rep. Apr. 338; *The Globe and Mail*, [1982] OLRB Rep. Feb. 181; *Elbertsen Industries Limited*, [1984] OLRB Rep. Nov. 1564; *Cambridge Canadian Foods Inc.*, [1987] OLRB Rep. Mar. 319, and *Zest Furniture Industries Limited*, [1987] OLRB Rep. Feb. 299.

...

12. The Board has considered that a small bargaining unit may be a factor in determining whether a vote will reveal the true wishes of employees in a number of cases including *DI-AL Construction, supra*; *Primo Importing and Distributing Company Limited*, [1981] OLRB Rep. July 953, and *Rockhaven and Motels (Peterborough) Limited*, [1979] OLRB Rep. June 559. In this case, the size of the bargaining unit suggests that the anonymity which the ballot box might provide in a larger workplace cannot be relied upon to the same extent. Indeed, it was apparent from Mrs. Csanadi's testimony that she believed that she already knew to some degree which employees supported and which employees opposed the union.

64. In this case, the employees cannot freely express their wishes in a representation vote in the context of a discharge of an individual associated with union activity. The actions of the employer served two purposes. It stopped the union organizer from having access to employees and it sent a message to employees that support for the union meant job loss. A representation vote with ancillary relief will not be sufficient to counter the effect of the employer's contravention. There is no certainty for employees entering the polls that the employer will not do to them what it did to Mr. McCarthy. There is nothing the Board can do as remedy that could make the employees believe that their job security is not tied to their support for the union. The Board cannot fashion a remedy that will reverse the effect on employees of that job threat. Accordingly, the remedy of certification is the only one sufficient to address the breach in this case.

65. For these reasons, the union's application under section 11 is granted.

66. The appropriate bargaining unit for which the applicant is entitled to be certified in the construction industry is set out in paragraph 3 of this decision.

67. A certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the United Brotherhood of Carpenters and Joiners of America and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, in respect of all carpenters and carpenters' apprentices in the employ of Swing Stage Equipment Rentals Ottawa in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

68. Further, a certificate will issue to the applicant trade union in respect of all carpenters and carpenters' apprentices in the employ of Swing Stage Equipment Rentals Ottawa in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

69. The responding party is directed to forthwith post copies of this decision, in a location or locations where they are most likely to come to the attention of those employees who may be affected by it. These copies are to remain posted for a period of 15 days from the date of this decision. The responding party is also to provide individual copies of this decision to the three individuals who were at work on the application certification date.

70. I remain seized to deal with any remedy with respect to the discharge of Mr. McCarthy.

4018-05-G Brick and Allied Craft Union of Canada, Local 10 and International Union of Bricklayers and Allied Craftworkers, Local 10, Applicant v. **Bondfield Construction Co. Ltd.**, Responding Party

Construction Industry Grievance – Jurisdictional Dispute – Remedies – Following a finding that Bondfield had incorrectly assigned drywall taping work to the Painters in the Kingston area, the Bricklayers sought damages for the breach – The Board canvassed its jurisprudence in JD-related damage claims, where it asks: was the action of the employer substantively unreasonable or was there procedural unreasonableness in the employer's decision-making process? – In this case, the Board found that the assignment by Bondfield clearly violated two important factors that would constitute indicia of unreasonableness (an earlier Board decision; and area practice) – Bondfield argued that its actions were not unreasonable and, in any event, it was not the employer proper since it had subcontracted the taping work to Oakdale, a party bound exclusively to the Painters agreement – The Board held that a work assignment which flies in the face of an unequivocal earlier Board ruling involving the same three parties amounts to second guessing the Board decision and will not be countenanced; a claim for work on the basis of a Board decision in a JD is superior to other claims based on other factors – Grievance allowed; quantum of damages remitted to the parties

BEFORE: *Mark J. Lewis*, Vice-Chair.

APPEARANCES: *L. A. Richmond* and *A. Leduc* appearing for the applicant; *Walter Thornton* and *John Aquino* appearing for the responding party; *R. Werry* and *J. Keyes* appearing for Carpenters Employer Bargaining Agency.

DECISION OF THE BOARD; May 8, 2007

1. This is the referral of a grievance in the construction industry to the Board for determination under section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended (the "Act"). The applicant is Brick and Allied Craft Union of Canada, Local 10 and International Union of Bricklayers and Allied Craftworkers, Local 10 (collectively hereinafter referred to as the "Union" and or the "Bricklayers"). The responding employer is Bondfield Construction Company Limited ("Bondfield"). An intervention was also filed by the Carpenters' Employer Bargaining Agency but, for the reasons set out below, this body was not granted intervenor status and as a result did not participate further in these proceedings.

The General Context

2. This grievance concerns drywall taping at a construction project at the Collins Bay Correctional Institution in Kingston, Ontario. Bondfield is the general contractor on this project. This drywall taping commenced in February of 2006 and, although not on a daily basis, has continued to be performed at this project since then.
3. Bondfield has been bound to the Bricklayers' ICI Provincial Agreement for many years. In or about February, 2005, Bondfield became bound to the Painters' ICI Provincial Agreement. Both collective agreements contain subcontracting clauses which dictate that the work covered by that agreement will only be performed by members of the union which is a party to the agreement, whether as direct employees or through the requirement that such work may only be subcontracted to companies which are themselves bound to a collective agreement with that union.
4. There is no question that drywall taping is covered by the Painters' ICI Collective Agreement and that in many, if not most, areas of the province this work is traditionally performed by members of the International Union of Painters and Allied Trades (the "Painters"). However, there are distinct areas of the province where this is not the case. Kingston is one such area. In the Kingston area taping work has traditionally been performed by members of the Bricklayers and there is no question that, for this area of the province at least, their collective agreement covers such work.
5. Bondfield choose to subcontract the work on this project to Oakdale Drywall and Acoustic Limited ("Oakdale"). Oakdale is bound to a collective agreement with the Painters but has no agreement with the Bricklayers. When the taping work commenced it was assigned to, and was performed by, members of the Painters. Almost immediately thereafter, on February 28th, 2006, the Bricklayers filed, and subsequently referred to the Board, this grievance alleging that Bondfield had violated Article 1(d) of the Bricklayers' Provincial Agreement by subcontracting the taping work to Oakdale and that as a result this work was not being performed by their members.
6. As is usual in circumstances such as these, the Painters filed a dispute concerning work assignment with the Board pursuant to section 99 of the Act (Board File No. 4092-05-JD). This caused this grievance referral to be adjourned pending the determination of the jurisdictional dispute. In a decision issued on August 14th, 2006 (the "jurisdictional dispute decision"), another panel of the Board determined that the taping work ought to have been assigned to members of the Bricklayers.
7. Despite their efforts to do so, Bondfield and the Bricklayers have been unable to settle this matter. Since the release of the Board's decision in Board File No. 4092-05-JD, Bondfield has recognized the Bricklayers' jurisdiction and the taping work is now being performed by members of the Bricklayers. The issue which divides the parties, and which must be determined in this referral, is, however, the question of damages for the work which was performed prior to August 14th, 2006. Bondfield takes the position that, pursuant to the Board's standard jurisprudence with respect to damages in the context of jurisdictional disputes, no damages are appropriate. Relying on the same cases as Bondfield, the Bricklayers take the position that full

"Blouin Drywall" damages are appropriate and should be awarded given the specific circumstances of this matter.

Intervention by the Carpenters' Employer Bargaining Agency

8. As noted above, the Employer Bargaining Agency for Carpenters appeared at the hearing in this matter and sought intervenor status. The Union opposed this request while Bondfield took no position on it.

9. The Carpenters' Employer Bargaining Agency ("EBA") readily acknowledged that it did not have any direct legal interest in this matter such that it could meet the normal threshold established by the Board for the granting of intervenor status. In particular, this EBA is not a party to, or in any way bound by, the collective agreement under which this grievance was filed. Nevertheless, the Carpenters' EBA sought status on an *amicus curiae* basis.

10. In a brief decision provided to the parties orally at the hearing, the Board denied the Carpenters' EBA intervenor status. As the Board advised the parties it would do, the reasons for that decision are set out herein.

11. All of the cases relied on by the parties state that while the Board has the discretion to grant intervenor status on an *amicus curiae* basis, it has actually only done so in a very limited number of situations. In *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. February 70, the Board stated the following with respect to this form of status at paragraphs 6, 7 and 8:

6. A party which seeks to intervene in a proceeding before the Board must demonstrate either that it has a real direct discernible interest in the proceeding, or persuade the Board that it is able to provide the Board with assistance which will ensure that all relevant issues are properly presented such that it should be granted a kind of *amicus curiae* status. *Amicus curiae* status, which is granted as a matter of the Board's discretion as the master of its own proceedings, has rarely been granted by the Board. (In *Kidd Creek Mines Ltd.*, [1984] OLRB Rep. Mar. 481, the United Steelworkers of America was granted *amicus curiae* intervenor status limited to making representations on the legal and policy issues raised by an application for certification by the IBEW, Local 1687 for a bargaining unit of maintenance electricians, notwithstanding that the Steelworkers neither represented any of the employees directly affected by the application nor sought to do so. Intervenor status was granted on the basis that the Steelworkers was the dominant trade union in the mining industry and represented many mine maintenance electricians within broader based bargaining units out of their mines. On the other hand, in *New Dominion Stores*, [1986] OLRB Rep. Apr. 519, the Steelworkers was denied such intervenor status.)

7. In order for a party to be entitled to participate in a proceeding as an intervenor, it must have an interest in the outcome of the proceeding which is direct and substantial. An interest which is merely political, which is anticipatory or speculative, or which is concerned with an indirect economic or commercial effect is not sufficient to entitle a party to participate. Nor is the fact that a decision in the proceeding may be used or referred to as a precedent in another proceeding. (See, *New Dominion Stores*, *supra*, at page

521; and more generally, *Re Schofield and Minister of Consumer and Commercial Affairs*, [1980] 28 O.R. (2d) 764 (Ontario Court of Appeal).)

8. It is generally not appropriate to permit an *amicus curiae* intervention unless the party seeking to intervene on that basis can demonstrate that its participation will provide a real and substantial input on important material issues which the Board is unlikely to receive from the direct parties, and that the participation of such an intervenor will not cause undue delay, or prejudice to a direct party.

12. The Board also emphasized the limited number of occasions in which *amicus curiae* status has actually been granted in *Ontario Power Generation Inc.*, [2002] OLRB Rep. November/December 1139 at paragraph 5:

5. On rare occasions, the Board has given status on an *amicus curiae* basis to an intervenor. This has been done only in a very few instances (e.g. *Kidd Creek Mines Ltd.*, [1984] OLRB Rep. March 481 and *Ontario Hydro*, [1996] OLRB Rep. Feb. 70) where the Board was dealing with important issues of general statutory policy, where the intervenor has a particular expertise and experience in the area, and where the particular perspective of the intervenor was unlikely to be articulated or presented by any of the parties to the proceeding.

13. In support of its request the Carpenters' EBA asserted that it was one of the largest, if not the largest, Employer Bargaining Agencies and that included within its membership were many general contractors and other contractors that were bound to collective agreements with more than one union. It stated that collective agreements were becoming increasingly complex and in particular the work jurisdiction claimed by various trades unions in their collective agreements was growing exponentially. It was asserted that, as a result of all unions expanding their own work claims, there were ever increasing areas of overlap in the work claimed by different unions and that this had in turn resulted in an unprecedented number of jurisdictional disputes. Therefore, the Carpenters' EBA argued that it should be granted *amicus curiae* status as it had a particular interest in ensuring that the Board's general practice of not granting damages in the context of jurisdictional disputes not be altered or varied in any way as its members were the very type of employers that were most likely to become involved in jurisdictional disputes given that so many of them were bound to the collective agreements with multiple unions.

14. All of the factual underpinnings of the Carpenters' EBA's argument for status are more than likely correct. In many collective agreements, unions' jurisdictional claims have been, and continue to be, expanded and overlapped. Such an expansion and overlapping of claims obviously increases the number of possible, if not actual, jurisdictional disputes which employers may become involved in. However, this is simply not a sufficient basis for the Board to grant party status to a "stranger" to this proceeding.

15. The Board recognizes that the Carpenters' EBA, like all Employer and Employee Bargaining Agencies, has a keen general interest in any Board decisions concerning claims for damages which follow jurisdictional disputes. In the case of Employer Bargaining Agencies, it can be accepted that this "keen interest" includes an interest in maintaining any policies which limit an employer's liability when faced with such damages claims. However, such a general interest, regardless of how keen it may be because of its potential commercial ramifications, is, in

and of itself, simply not sufficient to obtain *amicus curiae* status in this case. As both of the decisions quoted above make clear, whatever else may be relevant to its determination, the Board will not grant *amicus curiae* status unless the particular perspective of the potential intervenor is unlikely to be put forward to the Board by any of the other parties. Having reviewed the response of Bondfield, it was clear that the positions and arguments which the Carpenters' EBA wished to advance were essentially identical to those of Bondfield. Therefore, the Board determined that granting *amicus curiae* status, which always involves the Board exercising its discretion in an extraordinary manner, was unlikely to be of any assistance to the Board in this matter. It was on this basis that the Carpenters' EBA's request for intervenor status was denied.

The Evidence

16. Having dealt with the issue of the intervention and after the parties reached an agreement on the production of documents (which related solely to the number of hours of tapers' work performed on this site by members of the Painters and which both parties were able to agree would not be in issue on the first day of hearing in any event), the parties thereafter made submissions concerning the evidence which the Board should consider.

17. The Union wished to call Mr. Al Leduc, Local 10's Business Manager, to give *viva voce* evidence primarily concerning certain conversations he had had with representatives of Bondfield at or about the time when the taping was first awarded to the Painters. Bondfield objected to the introduction of any such evidence on the basis that it was irrelevant to any question that the Board would ultimately have to answer. Its view was that all relevant evidence was already "on the record" either because it had been agreed to by the parties, could be established with reference to the materials filed in the jurisdictional dispute and/or had been explicitly determined and set out by the Board in the jurisdictional dispute decision. It was the position of Bondfield that, in such circumstances, introducing further evidence designed to put the events which had occurred at the start of 2006 under a microscope for a detailed post-mortem was not only unnecessary but would in fact be counterproductive in the broader labour relations' context. At its core, Bondfield's argument was that unions and employers have informal discussions on job sites in an effort to resolve potential jurisdictional disputes all the time and that if calling evidence about such conversations was to become commonplace then the parties would simply stop talking to each other for fear of making a mistake which could come back to haunt them.

18. Ultimately it was unnecessary to rule on this point as the Union determined that it could proceed without calling Mr. Leduc as a witness when both parties accepted that all of the substantial points on which the Union wished him to testify were in fact encapsulated within paragraph 14 and 19 of the Board's jurisdictional dispute decision. Following this epiphany, this matter proceeded to argument based on the evidence as established by the facts agreed to in the pleadings in this referral, the materials filed in the jurisdictional dispute and as found and set out in the jurisdictional dispute decision.

The Law

19. There was no dispute as to the appropriate jurisprudence and legal principles which were applicable in this matter. Both parties relied on the same cases and urged the Board to follow the same legal principles established by those cases.

20. The Board's general practice with respect to damages following jurisdictional disputes was set out in *Sayers & Associates Limited*, [1994] O.L.R.D. No. 3212, Board File No. 0068-91-G (August 29, 1994). This is the "seminal case" on this subject, that it is relied upon by all of the Board decisions that have followed. Both parties not only relied upon it to support their positions but also both claimed that if the Board did not rule in their favour in this case then the Board would have effectively overruled the principles established in *Sayers & Associates, supra*. Consequently, it is worth quoting extensively from it. Commencing at paragraph 12 and ending at paragraph 21, the Board stated the following:

12. Conflicting claims to work jurisdiction are a fact of life for employers in the unionized construction industry, particularly for employers like Sayers and Associates, Stark and English and Mould who are bound, together with the competing trade unions, to provincial agreements and who employ their members. Contractors make work assignment decisions in a variety of situations, such as when they are bidding for work; when pre-job mark-up meetings are held for the purpose of informing the trade unions (and considering their responses) about whose members will perform particular packages of work on a project; and, during the execution of jobs when one trade union perceives that "its work" is being done by members of another trade union.

13. When a conflict arises between trade unions about an employer's assignment of particular work, the employer does not have the luxury of unlimited time in which to consider the relative merits of the competing claims before making the assignment. Therefore, when employers in circumstances such as were present here make their best decision, but on challenge under section 93 of the Act are found to have made the "wrong" assignment, the appropriate remedy is a direction to "correct" the assignment; in other words, direct the employer to assign the work to the members of the trade union which the Board found to have the better claim to the work.

14. That has been the Board's usual remedy in section 93 applications whenever it has concluded that an employer has assigned work to members of one trade union, trade or craft when it should have assigned it to members of another trade union, trade or craft. When that happens to an employer in circumstances like those present with these applications, where the employer considered the relevant factors and made a reasonable assignment (albeit one found by this Board to be incorrect), the employer should not then be subject to damages for lost wages because its incorrect assignment has put it in apparent breach of hiring hall, sub-contracting, or other work protection provisions of a collective agreement to which the employer is bound. That would result in the employer having to pay twice for the same work because of a contest between two trade unions over which one's members should do the work, and in a context where the assignment was reasonably made and the work in question was covered by both collective agreements.

15. The Board recognizes fully that paying twice for the same work is the natural consequence befalling the employer who attempts to circumvent its collective agreement obligations by hiring outside the hiring hall provisions or subcontracting contrary to the requirements of the agreement and is found in breach of the collective agreement. Such provisions are there to prevent

employers from avoiding their obligations to pay the wages, benefits and other terms of a collective agreement. Therefore, when an employer knowingly or carelessly breaches those protections and, as a result, members of the union lose wages or opportunities to earn wages, damages in the form of compensation for the losses are appropriate even though the damages represent a second payment for the work done in breach of the collective agreement.

16. Those are materially different circumstances than where an employer has rationally considered the relative merits of competing claims for the disputed work, decided that it should be assigned to the members of one disputing union instead of another one, and then later is found by a tribunal, like the Board, which adjudicates such disputes to have made the wrong assignment. In the latter circumstances, it would not be in the long term labour relations and economic interests of construction industry employers, trade unions and their members to require employers to pay twice for work performed during incorrect assignments.

17. The Board is not overlooking the fact that members of the trade union to whom the work should have been assigned, and who were available to do the work, have lost an opportunity to earn wages as a result of the incorrect assignment. It well may seem something of a hollow victory for the "winning" union and its members to be told that the work should have been assigned to them, and then not be redressed for lost wages. However, the successful union and its members do benefit from the precedent setting nature of the award respecting future assignments by that employer of the same kind of work in the same Board area. It also has precedential value respecting other employers when assigning the same work in circumstances which are materially similar.

18. One of the major problems for construction industry unions during the decade or more prior to the recent amendments to section 93 of the Act and the Board's Rules of Procedure applicable to work assignment disputes has been the substantial length of time it has usually taken to hear and decide an application. It was rare, if ever, that an application was decided before the disputed work was completed. Therefore, when a union succeeded in having a work assignment changed in favour of its members, they did not get to do the work on the project where the dispute had arisen. This situation has been improved substantially because of the expedited procedures currently available under the Act and the Board's Rules of Procedure applicable to work assignment complaints. The Board is responding quickly in resolving work jurisdiction disputes brought under that section. This means that parties to timely applications can expect normally to get a resolution to a dispute while the work is still being performed. Therefore, if the Board alters an assignment, there will be work for the beneficiaries of the assignment to perform. Therefore, when the Board decides to correct an employer's assignment, a Board direction that the employer forthwith make the correct assignment is the appropriate way to remedy the "incorrect" assignment. Conversely, it would be an inappropriate remedy and not in the best interests of labour relations in the construction industry to award damages under a grievance which alleges that the employer's "incorrect" assignment had resulted in breaches of the collective agreement of the "winning" trade union.

19. That is not to say, however, that there could be no circumstances in which damages in the form of compensation for lost wages and/or relief in the form of cease and desist and other declarations would be appropriate remedies where an employer makes an incorrect assignment. Such remedies might well be appropriate where an employer acts arbitrarily in making an assignment, or disregards established area practice, and/or ignores or fails to properly consider other commonly accepted criteria for making work assignments, and is found to have breached a collective agreement because of the incorrect assignment.

20. It was for these reasons that the Board, in exercising its arbitral discretion to fashion remedies, including an award of damages in the form of compensation for lost wages, concluded that it would not grant the remedies sought in the four applications even were the Board to assume, without finding, that the employer in each instance had breached the provincial agreement between the Sheet Metal Workers' International Association and the Sheet Metal Workers' International Association Ontario Sheet Metal Workers' Conference and the Ontario Sheet Metal and Air Handling Group to which they and Sheet Metal Locals 30 and 392 are bound. In the result, these applications are dismissed.

21. Before concluding [sic] these matters, the Board is constrained to make some observations. It is conventional wisdom in the unionized construction industry in Ontario that, when a union successfully challenges an employer's work assignment before a tribunal established to decide such matters, and the employer corrects the assignment pursuant to a direction of a tribunal established to decide such matters, the successful union does not then seek damages by means of a grievance alleging breaches of its collective agreement binding on the employer arising out of the incorrect assignment. The Board is unaware of any instance where, after it has directed an employer to alter a work assignment, the trade union which gained the assignment for its members made a successful claim for damages or any other remedy, or even where it has filed or pursued a grievance under section 126 [section 133] of the Act, other than these applications. Nor did any of the parties refer the Board to any specific or general authority supporting an award of damages or other remedies in a grievance pursued after a successful challenge to a work assignment.

21. Both parties also relied heavily on the Board's decision in *Robertson Yates Corporation Limited*, [1995] OLRB Rep. February 158. In that case, having completely accepted the principles established in *Sayers & Associates*, *supra*, the Board went on to state the following at paragraphs 22 to 31:

22. The purpose of the jurisdictional dispute provisions, to which [section 133] application of this nature is an adjunct, is to determine the correct work assignment, in a context in which the unions and the assigning contractor or employer have legitimate and reasonable dispute over the appropriate assignment. The Board is therefore called upon to exercise its powers under section 93 and to determine the "correct" assignment. The process is designed to provide the parties with a quick answer, where there may be well-founded but competing claims to what is "correct", claims not amenable to resolution under section 126 [section 133] of the Act, but claims needing Board intervention. It would be counterproductive to thereafter penalize

contractors or employers who made reasonable assignments in the particular circumstances, even if those assignments nevertheless turned out to be "incorrect".

23. Jurisdictional complaints, and related [section 133] applications, should together comprise a mechanism that will reduce the incidence of work assignment disputes and the delays and obstructions to construction in the province. If damages were awarded for assignments reasonably made, the ability of contractors and unions to inexpensively resolve assignment disputes amongst themselves would be seriously impeded.

24. While there is an initial attraction to the view that a breach of the collective agreement involving the use of non-members of the union, that occurs because of an incorrect assignment to another union, ought to result in a remedy that includes damages, this approach misconceives the character of the dispute, and its tripartite nature. This analysis rests upon the assumption that entitlement to work flows from the union's craft status or specific language in the collective agreement, neither of which is strictly true.

25. The reality is that contractors and employers are regularly bound to collective agreements with different trades, each of which cover work of a particular sort, binding the contractors or employers to assign particular work to both unions. The requirements are often irreconcilable. And the reality is that these collective agreements are negotiated in a context where the bargaining parties are fully aware of this when the agreements are settled. The parties are under no apprehension that the granting of subcontracting protection in these areas of overlap of work jurisdiction will necessarily guarantee a union the work. They both realize that there may still be valid claims to the work by competing unions.

26. Ultimately, it is the work assignment decision that determines which union is entitled to the work. It is not ordinarily the collective agreement which secures the work, regardless of its clauses. Damages ought not to flow, therefore, simply because the assignment was made contrary to a particular clause in the collective agreement.

27. Contractors or employers must decide which union to use. Often the decision will be clear. Equally, because of the nature of the industry, and the changing practice in it over the years, assignment decisions can be difficult. There may only be fine distinctions justifying one assignment over the other, and very plausible reasons for either.

28. Damages should be restricted to those circumstances in which the Board concludes that a contractor/employer did not act reasonably, not those circumstances in which an employer reasonably was wrong.

29. And there will no doubt be occasions when the Board might award damages; for example, where an employer wrongfully declines to hold a mark-up meeting, where the employer assigns contrary to generally accepted practice or to Board decisions indicating the correct methodology or assignment, or when the Board is not satisfied the assignment was made in a

bona fide manner or for a *bona fide* purpose. This does not purport to be an exhaustive list.

30. The materials filed in a jurisdictional complaint generally set out the process by which the work came to be assigned. These materials usually describe the factors considered by the contractor/employer in assigning as it did. These facts are rarely in dispute. Unions which wish to establish, in the [section 133] application, that contractors/employers acted unreasonably in their assignment will therefore commonly have knowledge of what took place, and will be able to focus on any aspects of the process or result they allege to be deficient.

31. If the contractor/employer must prove reasonableness in every [section 133] application, there will likely be litigation in most applications. This would be expensive, and unnecessary in a great many cases. If, on the other hand, the union has to demonstrate unreasonableness by the contractor/employer, the only cases litigated will be those where there was some good reason to believe that damages might issue, where the union had some grounds for believing a contractor/employer acted unreasonably. For this reason, we prefer the latter approach.

22. In *Ellis Don Limited*, [1997] OLRB Rep. March/April 202, which again reaffirmed the approach taken in *Sayers & Associates, supra*, and *Robertson Yates, supra*, the Board succinctly summarised its general approach as follows:

...

The view expressed in these decisions is that unless the assignment is unreasonable in some fashion (for example, because it is made in clear violation of a Board ruling, or made *mala fide*, or contrary to the established practice in an industry or where there was no opportunity or procedure for the union to make a claim for the work), there will be no damages.

23. Finally, the Board has recently commented on the distinction between the unreasonable actions of an employer and procedural unreasonableness in the employer's decision making process, and the effect that this distinction may have on a claim for damages following a jurisdictional dispute. In *Roberts Group Inc.*, [2004] O.L.R.D. No. 4203, Board File No. 0434-03-G (October 20, 2004), it stated the following, at paragraphs 17 and 18, concerning these two distinct basis on which the Board may consider the award of damages, although it must be noted that neither party thought this was a situation that procedural unreasonableness applied to:

17. These brief comments refer to two different types of actions of an employer that might be found to be unreasonable. The first, and more serious type of unreasonable action, is a decision that is found to be substantively unreasonable. If an employer assigned work in the face of one or more decisions of this Board made in reasonably similar circumstances (provided the employer is made aware of them), or assigned work in a manner contrary to generally accepted practices, such a decision will be unreasonable as well as simply wrong. That is, the Board would have to conclude that no employer considering the assignment question on a rational and reasonable basis could have come to this decision. Such a decision is then unreasonable on a substantive basis. This is a very high standard and will be found only rarely.

18. The other type of case will be one in which the process of the employer's decision-making process is unreasonable. The Board's concern expressed in the cases cited above about bad faith, carelessness or failure to hold a markup meeting where a collective agreement or custom requires one, are directed at process rather than the ultimate result. An employer may be found to have acted unreasonably if its motives are tainted by bad faith, or the procedure it adopts in making its decision is so deficient or negligent as to be properly characterized as unreasonable. This is a much more problematic area, but may also be one where the Board finds that damages are appropriate.

The Basic Positions of the Parties

24. The Union not only accepted that it had the burden of proof in this case but also acknowledged that this burden was a considerable one. As is made clear in all of the cases which have considered the award of damages following a jurisdictional dispute, the Board has never in fact awarded damages under the principles set out in *Sayers & Associates, supra*, which formed the basis of the Union's claim in this case. Nevertheless it was the Union's position that it had put forward sufficient evidence to meet the burden which the Board's jurisprudence placed upon it. In fact the Union went further. It claimed that as the Board had always provided for the possibility of the award of damages and, as this case fell precisely within those very situations where the Board had indicated that damages would be appropriate, not to award damages here would be to write out the general principles first established in *Sayers & Associates*. In particular the Bricklayers relied on the fact that they had previously been awarded the disputed work by the Board in *Brunswick Drywall Limited*, [1982] OLRB Rep. August 1143, and that, in the Kingston area, there was an accepted practice that taping was Bricklayers' work. It was argued that if damages were not awarded in these circumstances then the Board was effectively saying to the construction industry that damages would never be awarded following a jurisdictional dispute.

25. Conversely, Bondfield's argument was based on a more conventional reading of the Board's jurisprudence. It accepted that the award of the taping work to the Painters had ultimately been found to be incorrect. However, Bondfield asserted that, in view of the fact that it had immediately complied with the Board's decision and that thereafter the work had been re-assigned, the Bricklayers had secured their remedy. It argued that it had had to make a choice between competing unions both of which had a collective agreement with it that covered the work and that therefore no matter what decision it made it would have been faced with a claim for the work and a grievance. Given this, and its claim that there had been a reasonable basis for awarding the work to the Painters initially, Bondfield asserted that the Board should refuse to order damages as to do so would be directly contrary to the principles established in *Sayers & Associates*. It argued that by awarding damages the Board would be punishing Bondfield for being wrong, in circumstances where it had made a reasonable attempt to reach a correct decision, which was precisely what the Board had consistently stated should not occur.

The Decision

26. The Board's jurisprudence, as set out in all of the cases commencing with *Sayers & Associates Ltd., supra*, and continuing through to *Roberts Group Inc., supra*, is both longstanding and clear and the Board has no intention of departing from it. Employers should not be subject to

damages simply because they have made a work assignment which is incorrect. However, the Board has never stated that it would never award damages in the context of a jurisdictional dispute. All of the cases relied upon by the parties in this matter make clear that there are certain circumstances which would attract damages notwithstanding that the Board has never actually made such an award. This principle was succinctly set out in paragraph 28 of *Robertson Yates Corporation Limited, supra*:

28. Damages should be restricted to those circumstances in which the Board concludes that a contractor/employer did not act reasonably, not those circumstances in which an employer reasonably was wrong.

Accordingly, the question to be determined in this matter is was Bondfield's assignment in this case not simply incorrect but also unreasonable.

27. The facts of this situation are extremely unusual. Here there can be no question that this work was assigned to members of the Painters contrary to two of the very factors which the Board has consistently held would constitute indicia of unreasonableness, specifically a Board decision made in reasonably similar circumstances and generally accepted work practices in the area. None of the cases previously decided by the Board have facts which in any way approach these facts.

28. Bondfield acknowledge that it was aware of the decision in *Brunswick*, along with its own practice and the general practice of assigning drywall taping work to members of the Bricklayers in the Kingston area at the time the decision to assign this work to members of the Painters was made. Nevertheless, it argued that its decision was not unreasonable as, when the assignment for this job was made, the relevant circumstances which it had to consider had fundamentally changed such that *Brunswick* and its own practice were no longer determinative. Specifically, Bondfield relied on the fact that it had recently been certified by the Painters and was therefore bound, for the first time, to the Painters' ICI Collective Agreement (as opposed to only being bound to an agreement with the Bricklayers') when it made this assignment. Therefore, Bondfield argued, this was the first time it was required to make a real choice between the two competing unions.

29. In addition to establishing bargaining rights for the Painters', which is, in and of itself, one of the factors which is relevant in determining the correct assignment of disputed work, Bondfield further argued that the certification had also profoundly altered all of the "practice" which it could reasonably consider. It asserted that the Bricklayers' practice had been acquired when it alone had bargaining rights and was therefore of little relevance once the Painters' had also established bargaining rights.

30. Finally, Bondfield based its claim to have acted reasonably on the fact that it, or at the very least it alone, was not the "employer". It stated that the actual employer that had made the assignment in this case was Oakdale and that Oakdale had been reasonable, if not ultimately correct, in awarding this work to the Painters' based on its practice. In this respect, Bondfield argued that the Board was required to accept the employer's, meaning Oakdale's, practice for what it was and, even though it was not extensive (three jobs in approximately 15 years in the Kingston area none of which, it was accepted, the Bricklayers had been aware of), Oakdale's practice had always been to use members of the Painters to perform drywall taping throughout the province, including Kingston.

31. The fundamental weakness of Bondfield's argument concerning the reasonableness of its decision is that it fails to adequately address the importance and relevance of the Board's decision in *Brunswick, supra*. In none of the previous cases which have considered the question of damages was there a prior decision of the Board dealing so squarely with the work assignment in dispute. The case which is the closest to the circumstances of this case in this respect is *Roberts Group, supra*. In *Roberts Group, supra*, the Iron Workers relied upon a previous decision of the Board concerning similar work, the installation of pre-fabricated multi-purpose supports, but that decision concerned a different sector and a different Board area. Further, the decision relied upon only affirmed the Iron Workers' claim in a negative manner in that it held that the installation of single purpose supports was not the work of the Iron Workers and therefore, by negative inference, established that the installation of multi-purpose supports was. Even given this distinction between the work in dispute and the prior decision of the Board relied upon by the Iron Workers, the Board still found the employer's decision in *Roberts Group, supra*, which was contrary to, and made with apparent knowledge of, the prior Board decision, to be a "poor one" although ultimately not an unreasonable one.

32. The situation here is different. Bondfield had clear prior knowledge of the previous decision of the Board and the fact that it awarded jurisdiction for taping in Kingston to the Bricklayers. *Brunswick, supra*, involved the same two unions and the very same work in the same sector and geographic area of the construction industry. The decision in *Brunswick, supra* was unequivocal in awarding this work to the Bricklayers.

33. In *Roberts Group, supra*, there was some initial doubt on the part of the Iron Workers, both concerning their claim to the work and as to whether the prior Board decision was relevant to their claim. The Board found this "initial doubt" by the union to be of some significance in accessing the reasonableness of the employer's actions. Here, however, there was no "initial doubt" concerning their claim to the work by the Bricklayers and the direct applicability of the prior Board decision to that claim. This is clearly established by the language of the grievance, which Bondfield acknowledged had been filed expeditiously and which states, in part:

Attached is a copy of the decision of the Ontario Labour Relations Board in *Brunswick Drywall Limited*, which confirms that the work in question ought to be assigned to members of the Union. In this regard, the Union notes that the Employer itself has ensured that Local 10 tapers have performed all drywall taping work at the Employer's past projects including the Queen's School of Business and the Queen's Integrated Learning Centre by ensuring that its sub-contractors hired tapers who were members of Local 10, and applied the terms of the provincial collective agreement to those tapers. Local 10 has protected its jurisdiction as confirmed in *Brunswick Drywall Limited* since that time, and has done so consistently with respect to the Employer.

Accordingly, in the event the Employer is now attempting to change its well established past practice, in addition to other remedies, the Union will pursue deterrent damages at the Ontario Labour Relations Board.

34. When there has been a Board decision of the *Brunswick* type (which an employer is aware of), the situation, and thus the decision which an employer must make, is different from that which exists in the vast majority of jurisdictional disputes. In most jurisdictional disputes an employer is faced with competing claims by unions concerning which it is required to make an

immediate and 'first instance' evaluation. However, where there is an existing decision directly on point, the Board has already determined the question of jurisdiction. Failing to follow that decision is not simply a matter of evaluating competing union claims, about which an employer is entitled to be wrong provided it has acted reasonably, but is in effect a second guessing of the Board. When a particular dispute has been decided by the Board, the successful union secures the work in question by way of a determination of the Board in a proceeding under this Act. Such a claim for work is different from, and superior to, other claims based on other criteria such as, for example, the language in collective agreements. The superior nature of a claim based on a Board decision was made clear in *Robertson Yates, supra*, paragraphs 25 and 26.

25. The reality is that contractors and employers are regularly bound to collective agreements with different trades, each of which cover work of a particular sort, binding the contractors or employers to assign particular work to both unions. The requirements are often irreconcilable. And the reality is that these collective agreements are negotiated in a context where the bargaining parties are fully aware of this when the agreements are settled. The parties are under no apprehension that the granting of subcontracting protection in these areas of overlap of work jurisdiction will necessarily guarantee a union the work. They both realize that there may still be valid claims to the work by competing unions.

26. Ultimately, it is the work assignment decision that determines which union is entitled to the work. It is not ordinarily the collective agreement which secures the work, regardless of its clauses. Damages ought not to flow, therefore, simply because the assignment was made contrary to a particular clause in the collective agreement.

35. A Board decision has the effect of reconciling "the irreconcilable claims of the competing unions". This effect is extremely important, particularly to the successful union, since, in view of the Board's general refusal to award damages, it is often the only thing that a union gains from the jurisdictional dispute procedure. This limitation on damages in return for a precedential award represents the very essence of the labour relations balance that the Board has decided is appropriate in determining that damages should not be the norm in jurisdictional disputes, as is made clear by paragraph 17 of the decision in *Sayers & Associates, supra*:

17. The Board is not overlooking the fact that members of the trade union to whom the work should have been assigned, and who were available to do the work, have lost an opportunity to earn wages as a result of the incorrect assignment. It well may seem something of a hollow victory for the "winning" union and its members to be told that the work should have been assigned to them, and then not be redressed for lost wages. However, the successful union and its members do benefit from the precedent setting nature of the award respecting future assignments by that employer of the same kind of work in the same Board area. It also has precedential value respecting other employers when assigning the same work in circumstances which are materially similar.

36. Further, the precedential value of the Board's decision in *Brunswick, supra*, concerning drywall taping in the Kingston area would appear to have been underlined by the Board in directly addressing certain positions of the parties and in recording their undertakings. In this respect, paragraphs 13 and 14 of that decision state the following:

13. The evidence confirms that drywall taping has been done efficiently and virtually without challenge by the Bricklayers in the Kingston area for years. There seems to the Board to be little reason to disturb what appears to be a successful and long lived work jurisdiction the exercise of which has caused no industrial unrest. Counsel for the Painters suggested that a decision favouring the Bricklayers could produce a negative result in the form of a backlash against the Bricklayers if they should work, as they have on occasion, for Kingston Lath and Plaster Ltd. and Bertoia in the Belleville area. In this regard the Board is impressed by the undertaking given in evidence by Mr. Quesnel on behalf of the Bricklayers. He categorically stated that Local 10 does not seek to expand its territorial jurisdiction to Belleville or to other communities outside its present constitutional jurisdiction. In the light of that assertion, which the Board includes in this decision as a matter of record, the likelihood of future disputes seems unlikely.

14. We are agreed, however, with counsel for the Painters that the remedy in this complaint should be limited to the job location that gave rise to the dispute. While this decision should not be of any less value to the parties in the future, we do not see any reason to depart from the Board's general practice of confining the remedy in a jurisdictional dispute to the work immediately in issue.

37. All of this is not to say that work jurisdiction is unchanging and once determined by the Board remains set in stone for all times. Obviously work methods may change and practice can alter such that a previous decision of the Board might be of little relevance and/or out of step with the reality which has come to exist on the ground. However, a party which takes it upon itself to award work in the face of a prior Board decision, concerning exactly the same work, in the same sector, in the same geographic area, and involving the same two unions, on the basis of its determination that the situation has been sufficiently altered such that the prior Board decision is no longer applicable, must surely do so at its peril. Here, when Bondfield awarded this work to the Painters in the face of the *Brunswick* decision, it was not simply reasonably assessing the competing claims of the two unions, as is normally the case in jurisdictional disputes which come before the Board, but it was in fact evaluating and deciding on the ongoing correctness of the Board's prior award of jurisdiction to the Bricklayers in *Brunswick, supra*.

38. As all of the cases make clear, as a general rule the Board will not second guess the decision of an employer awarding particular work to a particular union through the award of damages even where the Board determines that the employer's decision was wrong. However, in this case the normal paradigm has been reversed. It was Bondfield that decided to second guess the Board. It has the right to do so but should it choose to exercise that right then it cannot take advantage of the standard which the Board has generally applied to those situations where there has been no previous Board determination or where an employer followed a previous determination which the Board subsequently reversed. Here, therefore, what must be determined in order to establish if Bondfield acted reasonably is the answer to the question of: "did Bondfield have a sufficient basis for not following the previous decision of the Board in *Brunswick, supra*, which had awarded the taping work to the Bricklayers?" The answer to this question is "no".

39. The reliance on the certification by the Painters cannot be held to be a sufficient or reasonable basis for Bondfield's actions. Although bargaining rights are a factor which is

considered, competing collective agreements are the norm in virtually every jurisdictional dispute and are generally the starting point of, rather than the determining factor in, such disputes. Here, even the most cursory reading of the Board's decision in *Brunswick, supra*, is sufficient to establish that the award of the taping work to the Bricklayers was not dependent on their bargaining rights but was instead the result of the practice which the Bricklayers had built-up, in many cases, in spite of which union held what bargaining rights. In *Brunswick, supra*, the Board clearly determined as a fact that the Bricklayers' were performing taping work not only when they had exclusive, or even shared, bargaining rights but even in those situation where only the Painters had bargaining rights. Brunswick itself, which was the only employer responding party in that case, only had an agreement with the Painters and had no collective agreement with the Bricklayers and yet the Board still awarded the work to the Bricklayers. Further, as the Board's jurisdictional dispute decision makes clear, after *Brunswick, supra*, the Bricklayers have continued to perform this work in the Kingston area, even for companies which were only bound to agreements with the Painters, and both the Painters and Bondfield had recognized and participated in this ongoing area practice.

40. Finally, and again as the jurisdictional dispute decision makes clear, Bondfield was directly aware that the "industry" had recognized the predominant practice, and the successfully established claim of the Bricklayers, for the taping work in the Kingston area. Mr. Foote, who as Director of Labour Relations of the General Contractors' Section of the Toronto Construction Association, would obviously be in a position to know if there was a generally accepted practice, was in no doubt with respect to the assignment of taping in the Kingston area. Further, Mr. Foote had made this position known to Bondfield who apparently shared it, as is noted by the Board at paragraph 15 of the jurisdictional dispute decision which states as follows:

15. In May of 2002, Bondfield was the general contractor on a job in Kingston where the drywall subcontractor was Casebridge Construction Ltd., who was bound to the Painters. At this point, Bondfield was bound to the Bricklayers, but not to the Painters. In a letter dated June 4, 2002 addressed to Bondfield, Brian Foote of the General Contractors Section of the Toronto Construction Association wrote that "as discussed the jurisdiction of taping drywall joints in Kingston has been awarded to the Bricklayers and I understand that Ralph Aquino [of Bondfield] has acknowledged that". Mr. Foote went on to explain that when Casebridge had previously worked in Kingston, it had hired local bricklayers and made remittances on their behalf. But, the Painters had, apparently, applied some pressure, and Casebridge was now remitting to the Painters who were not passing the funds on to the Bricklayers very quickly. Consequently, the Bricklayers requested that Casebridge remit directly to them.

41. There is also no sufficient or reasonable basis upon which to conclude that this overwhelming area practice which the Bricklayers had used to establish, and to thereafter maintain, their claim to taping work was somehow not relevant in situations where a general contractor was bound to collective agreements with both unions. This is not a situation similar to that in *Robertson Yates Corporation Limited, supra*, where the practice relied upon by the Carpenters all involved companies with which it had exclusive bargaining rights and where its previous awards of jurisdiction had been obtained through procedures under its own exclusive collective agreements. There is no suggestion in *Brunswick, supra*, that the practice which the Board found to be determinative was somehow limited by the fact that the general contractor in that case, Jackson-Lewis, was only bound to an agreement with the Bricklayers and that there was

another practice with respect to those general contractors that had collective agreements with both the Bricklayers and the Painters. In fact, as noted above Jackson-Lewis was not even a party in that case and the only "employer" was Brunswick, which only had an agreement with the Painters. Further, there is no hint, either within Mr. Foote's statements or the jurisdictional dispute decision, that the practice used by the Bricklayers to successfully establish their claim was somehow limited to situations where they alone had bargaining rights. If anything the opposite appears to be the case.

42. The Board accepts that the circumstances in *Brunswick, supra*, were not exactly the same as they were here and that there were at least a few examples of members of the Painters having performed taping work in the Kingston area which Bondfield may have relied upon. However, neither identical circumstances nor an absolute and total practice is required for the Board to consider an employer's decision to have been unreasonable. No two Board decisions concerning an award of jurisdiction will ever involve exactly the same circumstances and, where jurisdiction is contested, the practice is unlikely to be totally one sided (and by definition is always being added to in any event). As the Board stated in *Roberts' Group Inc., supra*, what a Union is required to show, and what the Board must find, to establish unreasonableness on the part of an employer is the assignment of work "in the face of one or more decisions of this Board made in reasonably similar circumstances" or assigning work "in a manner contrary to generally accepted practices". Both have occurred here and therefore the award of damages is appropriate.

43. Finally, Bondfield's argument that it, or at the very least that it alone, was not the "employer" that assigned the work to the Painters is not a sufficient basis for it to escape liability for damages to the Bricklayers. As noted herein, the collective agreement binding upon Bondfield and the Bricklayers required work covered by that collective agreement to be subcontracted only to companies that were bound to an agreement with the Bricklayers. Oakdale was not so bound. Therefore, Bondfield could only have made this decision to subcontract this work to Oakdale (without in any way ensuring that the taping work would be performed by members of the Bricklayers as it had done in the past) because it had determined that the Painters had a superior claim to the work. Given that I have determined that Bondfield's decision in this respect was unreasonable, Bondfield cannot now claim that it should not be liable for the consequences of its unreasonable actions. Had Bondfield not acted unreasonably and in direct violation of the Collective Agreement, Oakdale, a company which is not bound to an agreement with the Bricklayers and against whom the Bricklayers cannot seek damages, would not have been on this job site doing this work with members of the Painters. To uphold such an argument in these circumstances would be to allow Bondfield to completely insulate itself and ensure that the Bricklayers have no effective remedy.

Conclusion

44. Based on all of the above, the Board hereby finds that Bondfield was bound to and violated the Provincial Collective Agreement for Bricklayers, and specifically Article 1(d) by subcontracting drywall taping work to Oakdale, a company not bound to an agreement with the Bricklayers, at its Collins Bay Correctional Institution project. Further, the Board finds that damages are appropriate here notwithstanding that this grievance arises out of a jurisdictional dispute, and that the Bricklayers are entitled to such damages for all taping work performed on this project by members of the Painters and in respect of which there were members of the Bricklayers ready, willing and able to perform such work. The Board does not have the necessary

information upon which to quantify these damages but will remain seized with respect to this issue should the parties be unable to resolve it amongst themselves.

45. Finally, the Board wishes to reiterate that this decision in no way alters its longstanding jurisprudence concerning damages and jurisdictional disputes. Although this in the first case in which damages have been awarded in such a context this decision should not be, and cannot be, read as in anyway altering the clear principles first established by the Board in *Sayers & Associates Limited*, *supra*. This is an extremely unusual case involving an employer awarding work contrary to a previous decision of the Board (of which it was aware) and contrary to generally accepted area practice. As such the Board regards this case as the extremely rare "exception that proves the rule" rather than being an alteration or a weakening of the principle that in the overwhelming majority of cases, damages are not appropriate in the context of a jurisdictional dispute.

1386-06-R Ottawa-Carleton Public Employees Union (CUPE), Local 503, Applicant v. **City of Ottawa**, B & G Gorham Construction Inc., Rob Burns operating as Burns Landscape Maintenance, Concordia Paving Ltd., Thomas Cavanagh Construction Limited, Exel Contracting Inc., Jake's Lawn Care, Kern's Property Maintenance, Landtech Inc., Laurent Leblanc Limited, M.A. Thompson Cartage Limited, Malcolm Morris operating as Mac Morris Cartage & Equipment Rentals and Mac & Mike Morris Equipment Rentals, Mountainview Turf Farm Ltd., Yannick Brule operating as Need A Cut Services, Prop-Com Management Inc., Quinn & Company and Kanata West Landscape Maintenance, Responding Parties

Related Employer – Sale of a Business – CUPE alleged that the City of Ottawa and the other responding parties were a single employer or, alternatively, that there had been a sale of business under the Act because a significant portion of the summer season bargaining unit work was being conducted by the companies on contract with the city – The union was unable, however, to identify any bargaining unit members who had lost work opportunities, been laid off or terminated because of the contracting arrangements – The employer brought a motion to have the application dismissed, or deferred to arbitration, arguing that there had been no disposition of any functional economic vehicle or part thereof by the city, that the city's existing relationships with both CUPE and the contractors permitted contracting out, and that any operational control over the work performed by the contractors was to be expected given the city's mandate to provide municipal services – **Motion granted, application dismissed**

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *David Jewitt*, *Alison Longmore*, *Neil Dzousa*, *Brian Madden* and *Pierre Lalonde* appeared for the applicant; *David White* appeared for City of Ottawa; *Andrew Lister* and *Nigel McCready* appeared for B & G Gorham Construction Inc., Rob Burns operating as Burns Landscape Maintenance, Concordia Paving Ltd., Thomas Cavanagh Construction Limited, Laurent Leblanc Limited, M.A. Thompson Cartage Limited, Prop-Com Management Inc., Kanata West Landscape Maintenance, Malcolm Morris operating as Mac Morris Cartage & Equipment Rentals and Mac & Mike Morris Equipment Rentals and Jake's Lawn Care; *Sebastien Huard* appeared for Excel Contracting Inc.; *Julie Thibault* appeared for Landtech Inc.; *Michael S. Ruddy*

appeared for Mountainview Turf Farm Ltd.; no one appeared for Kern's Property Maintenance, Yannick Brule operating as Need A Cut Services and Quinn & Company.

DECISION OF THE BOARD; May 8, 2007

1. The style of cause is hereby amended to reflect the correct name of the responding party: "City of Ottawa". In addition, the applicant conceded that Cumberland Kanata Landscaping & Maintenance should be removed as a responding party.

2. This is an application under section 69/1(4) of the *Labour Relations Act, 1995* as amended ("the Act").

3. The applicant's primary position is that the City of Ottawa ("the City" or "Ottawa") and the other responding party entities ("the contractors") are a single employer under section 1(4) of the Act for purposes of the application of the collective agreement between the applicant (or "the union" or "CUPE") and the City. In the alternative, CUPE contends that there has been a sale of business under section 69 of the Act from the City to the contractors.

4. I heard the preliminary motions of the attending responding parties, and the response of the union, to dismiss this application without entertaining any evidence. This decision deals exclusively with those preliminary motions.

5. The provisions of the Act relevant to the preliminary issues are:

1. (4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

(5) Where, in an application made pursuant to subsection (4), it is alleged that more than one corporation, individual, firm, syndicate or association or any combination thereof are or were under common control or direction, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation.

...

69. (1) In this section,

"business" includes a part or parts thereof; ("entreprise")

"sells" includes leases, transfers and any other manner of disposition, and "sold" and "sale" have corresponding meanings. ("vend", "vendu", "vente")

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his,

her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights to which the employer is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application.

...

(12) Where, on any application under this section or in any other proceeding before the Board, a question arises as to whether a business has been sold by one employer to another, the Board shall determine the question and its decision is final and conclusive for the purposes of this Act.

(13) Where, on an application under this section, a trade union alleges that the sale of a business has occurred, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation.

6. For purposes of dealing with the arguments of the responding parties, I must and I do assume, without deciding, that the union's allegations are true and provable. I am also at liberty to take into account any undisputed facts.

CUPE's allegations

7. The union represents the inside/outside municipal employees of the recently amalgamated City of Ottawa. CUPE and the City have been in a collective bargaining relationship since 2001. However, it was not until the latter part of 2003 that, with the release of an arbitration board's interest award, the union and the City reached a post-amalgamation collective agreement. In the intervening period, the plethora of collective agreements between the amalgamating municipalities, including the former City of Ottawa and the Regional Municipality of Ottawa-Carlton, and their unions, remained in place.

8. CUPE's 2003 collective agreement covering inside/outside employees applies to a broad range of municipal operations and functions. However, CUPE's concern in this application is with a discrete portion of the inside/outside bargaining unit, namely "surface operations" work within the City's Public Works and Services Department ("the PWSD"), and specifically the five functions comprising the *summer season* surface operations (the CUPE bargaining unit is also responsible for winter surface operations):

- grass cutting and maintenance and maintenance at City facilities, parks, sports fields and municipal roadways;
- coreation and fertilization at City parks and sports fields;
- sand sifting at City parks and facilities;
- ditching along the City's rural roads; and
- asphalt road repair and catch basin repair and replacement.

9. It is within summer surface operations that the union claims there has been an erosion of the bargaining unit, and a concomitant adverse impact upon CUPE's bargaining rights. The union estimates that, since the municipal amalgamation in 2001, and particularly since organizational restructuring at the City in 2004, there has been a steady decline in the number of its members working in surface operations, from a high of between 768 and 878 employees to approximately 550 in the 2006 summer season. Moreover, CUPE contends that the decline was not apparent until the summer of 2005, and became obvious in the summer of 2006. I note, however, that CUPE does not identify any individual bargaining unit members who have lost work opportunities in surface operations, and does not, for that matter, allege that any person has been terminated or laid off or suffered a reduction in hours as a result.

10. The union asserts that the unionized manpower in surface operations should have been increasing, not decreasing, due to remarkable recent expansion of the City's service area. But instead the City has increased its reliance upon non-union workers employed, at least notionally as far as the union is concerned, by the responding party contractors. CUPE maintains that, over the course of time, these non-union employees have been integrated into the City's surface operations to an extent that they are virtually indistinguishable from the members of the bargaining unit¹, with the result that certain work that used to be performed by the unionized staff is now being increasingly performed by the contractors through their non-union staff.

11. The union contends that union/non-union ratio has grown adversely against its interests in virtually every one of the five surface operations functions. For example, prior to the summer of 2006, City employees operated City-owned Gradall machinery in the ditching work. The union alleges that in the summer of 2006, the City machinery lay idle, and the work was done by one of the contractors using its own equipment. Two of the union's members were re-assigned to other work, which the union contends may attract lower compensation. Similarly, in the coreation or turf management in the City's east district, union crews who performed that work prior to 2006 now find that the contractors have taken over these assignments. Much the same has occurred in the summer road maintenance program, which prior to the 2004 reorganization, employed about 64 unionized staff without any non-union assistance at all, but which now uses only approximately 40 CUPE bargaining unit members and between 14 and 16 non-union workers.

Undisputed facts

12. The collective agreement between CUPE and the City contains the following article on the subject of contracting out:

¹ CUPE provides examples of a number of manifestations of such integration. The union and non-union crews share the same shifts, meal periods and breaks, and, while at the City yard, share the same cafeteria and washroom facilities. They have jointly attended a City-sponsored social event. The City supplies to both the union and non-union crews, the materials necessary to complete surface operations work (asphalt, fertilizer, paper work and forms, some equipment). The non-union crews are closely supervised, and their work time documented, by City employees. Sometimes, the City supplies the contractors with safety equipment. Occasionally a non-union employee of a contractor has been hired by the City as an employee in surface operations (and presumably placed in CUPE's bargaining unit), and occasionally a retired or laid off employee has taken up with one of the contractors.

ARTICLE 22

CONTRACTING OUT

22.1 Contracting out will be defined as the carrying out of work by a firm or a private contractor which work was formerly done by the Employer itself utilizing its own regular staff and work crew.

22.2 The Employer agrees that persons not covered by the terms of this Agreement will not perform duties normally assigned to persons in the bargaining unit, except for purposes of instruction, experimentation, or an emergency when regular employees are not readily available, or as may otherwise be mutually agreed by the Parties in writing.

This clause is not however intended to restrict the use by the Employer of volunteers or family members providing additional care for residents of Long Term Care or volunteers involved in the provision of normal recreational and cultural services to the community.

22.3 In order to provide job security for members of the bargaining unit, the Employer will not contract out work usually performed by members of the bargaining unit if as a result of any contracting out of services, a layoff or reduction of hours of work of any employee, (other than casual employees) follows. Nor will an employee remain on layoff or reduced hours of work if that employee can perform the normal requirements of the work which has been contracted out. The contracting out to an Employer who is party to a collective agreement and who will employ the employees of the bargaining unit who would otherwise be laid off is not a breach of this provision.

22.4 a) The Union agrees that the work which has been contracted out by the former ROC and City of Ottawa prior to 1986, and any work which the union and the Employer may mutually agree in writing is not feasible for the Employer to consider carrying out using its own resources may be contracted out at the Employer's sole discretion.

b) The Union agrees that work which has been contracted out by any predecessor municipality in accordance with the relevant provisions of the applicable predecessor collective agreement may continue to be contracted out on a "grandparented" basis for the duration of this collective agreement provided the Employer provides the Union with all relevant and available information concerning the "grandparented" contracts or any renewal thereof over the life of this Collective Agreement so that the Union and Employer will be in a position to discuss and compare the efficiency, cost and availability of resources between performing the work in-house or continuing to contract out all or some of the work in question.

c) In all other cases, where the Employer intends to contract out work that would otherwise be bargaining unit work to a firm

or private contractor instead of carrying out the work itself using its own employees, the Employer will provide the Union with two (2) months notice and all relevant and available information, specifications, costings and rationale concerning the proposed contracting out so as to allow the Union the opportunity to submit a detailed written proposal to the Director responsible for the work or services. Upon receipt, the Director will give due consideration to the Union's proposal and afford the Union an opportunity to discuss, explain or amend its proposal in response to questions or concerns of the Employer. Where the Union elects not to submit a proposal and so long as no breach of article 22.3 occurs, the Employer may contract out such work at its sole discretion.

22.5 Subject to the foregoing, all work of the bargaining unit presently being performed by them shall continue to be performed by members of the bargaining unit.

13. There have been hundreds of grievances filed with respect to the City's contracting out work. CUPE and the City have agreed that one particular grievance referred to arbitration with respect to the contracting out of grass-cutting work will be a "test case" which will determine the outcome in all the other grievances. That test case has been heard by the arbitration board, and a decision is pending.

14. As article 22.4 (a) of the collective agreement suggests, CUPE had very long-standing bargaining relations with the former City of Ottawa and the Regional Municipality of Ottawa Carlton in respect of the inside/outside workers prior to the amalgamation in 2001.

The Arguments of the Parties

15. The City of Ottawa's argument formed the foundation upon which all the responding parties joined to one degree or another. Counsel for Mountainview Turf Farm Ltd. expanded upon the City's motion to defer to arbitration. Counsel for B & G Gorham Construction and nine other of the responding parties (collectively referred to as "Gorham") adopted the City's submissions concerning section 69 of the Act, and expanded upon the City's submissions regarding subsection 1(4). Counsel for Exel Contracting Inc. and counsel for Landtech Inc. adopted all of the submissions of the City, Gorham, and Mountainview, and each added brief comments of their own. In the interests of expedition, I have set out below the positions of the City and Gorham, as well as CUPE.

City of Ottawa

16. With respect to the application insofar as it pertains to a sale of business, Ottawa submits that the purpose of successorship legislation is "to prevent employees from losing union protection when a business is sold or transferred or when changes are made to the corporate structure of a business."¹

¹ *W. W. Lester (1978) Ltd. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 740*, [1990] 3 S.C.R. 644 at ¶ 56.

17. In order for section 69 to apply there are two elements that must be proven: one, that there is a business or part thereof, and two, that there has been some sort of disposition of the business or a part of the business. Something must be relinquished by the predecessor and obtained by a successor or successors.¹

18. Ottawa contends that, on the union's allegations of fact, there has been no disposition of any functional economic vehicle, or part thereof, by the City to any of the responding parties, nor does the application disclose the mischief that section 69 is designed to avoid. Counsel for Ottawa urged me to consider the context in which the City conducts its business. It is a creature of statute, governed by the *City of Ottawa Act* and the *Municipal Act*. The City can only do what is prescribed by these laws. Furthermore, the City's decisions are made transparently, by its Council, and are subject to full public scrutiny. And yet, despite the statutory limitations and the scrutiny under which the City operates, the union has not provided minutes of any Council or Committee meeting which disclose a decision to dispose of any part of the City's business, or even an intention to make such a disposition.

19. The City, therefore, requests that the Board dismiss this part of the application on the basis that it discloses no sale of business.

20. I turn next to the City's submissions concerning subsection 1(4) of the Act.

21. The City contends that the union's examples of common control and direction by the City over the other responding parties are not the kinds that attract the scrutiny of subsection 1(4). As the Board noted at paragraph 16 in *Jen-Ry Utility Contracting Company Limited*, [1984] OLRB Rep. December 1724:

...the test for "control" under section 1(4) of this Act envisions the ultimate power to "call the shots" where necessary, as counsel for the respondent put it, with respect to the labour relations of the two enterprises, and not simply the authority and responsibility to direct the activities of employees in the field. Were it otherwise, a totally independent and established company hiring the manager of field services from another company would inevitably find itself in the position of being a "related employer" for the purposes of the *Labour Relations Act*. Rather, we accept the submission of the respondent that the section contemplates a point of central decision-making control with the ultimate power to, for example, say "yes" or "no" to a wage proposal from the union for both entities. Such power, as the Board cases show, may come simply from the legal relationship between the two entities....or from a total lack of independence in practical or economic terms....or it may come from a combination of the two...

¹ W. W. Lester, *supra.*, ¶ 66.

22. The City acknowledges that it has some operational control over the other responding parties. But given the nature of the work, that is to be expected. For example, a municipal contractor cannot choose to fertilize a soccer field when it is being used by members of the public. That work has to be done at non-peak periods of the day. The City is entitled to say that the field will be fertilized at 7:00 a.m. Similarly, as a corporation accountable to the public, the City is entitled and expected to set detailed standards for the work carried out by its contractors. Finally, the fact that the City may on occasion provide its contractors with safety paraphernalia, or invite contractors to participate in City-sponsored social functions, is no more evidence of control and direction than it is of good commercial relations. The point is, this is not the kind of control and direction contemplated by subsection 1(4), says the City.

23. Essentially, the City says that even if the union could establish that Ottawa and the other responding parties are associated or related businesses under common control and direction, the Board would not exercise its discretion to declare that they are one employer for labour relations purposes. That is because the City and its contractors have had relationships that go back at least until 2001, and in many cases, decades beyond then. The contractors and their employees have been working side-by-side with unionized employees for many years, with the knowledge of the union or its predecessors. The City and CUPE have addressed the contract relationships via article 22 of the collective agreement, which has been the subject of hundreds of grievances. There is no risk to the union's bargaining rights, says the City. Rather, CUPE is simply seeking to gain a larger share of work it thinks should be available to it because of the City's growth in responsibilities. The union, the City alleges, is in fact using the Board's processes in this application to discover the case it thinks it might have under the collective agreement. For example, counsel for the City points to the voluminous request of the union for production of documents in this matter as evidence of the union's "fishing expedition".

24. In the alternative, the City requests that the Board defer to the arbitration process, and hold the application in abeyance until the arbitration panel releases its award.

B & G Gorham Construction Inc. et al

25. As I have indicated, counsel for Gorham adopted the argument of the City with respect to the application of section 69 in this matter.

26. Counsel also submitted that the union's pleadings fail to disclose that, under section 1(4) of the Act, the City and Gorham are associated or related activities or businesses. The City is a government whose function is to meet its statutory obligations to the public; whereas, Gorham is a private enterprise committed to turning a profit for its shareholders by bidding on and completing work, a relatively small fraction of which is derived from the City. In other words, when one examines the "total economic vehicle" of both the City and Gorham, one cannot conclude that they are associated or related activities or businesses, because – and despite the union's bald, unparticularized assertions to the contrary – they are not of the same character, do not serve the same general market, do not employ the same mode or means of production, do not utilize similar employee skills, and are not carried on for the benefit of related principals¹.

¹ These factors are cited in *Pinecrest-Queensway Health and Community Services*, [1992] OLRB Rep. November 1211 at paragraph 6. The Board went on to observe at paragraph 8 that "bargaining rights do not necessarily attach to particular work or employees. Although a continuity of work may be significant, it is not always sufficient to justify a finding that that [sic] two or more entities constitute one employer, or

27. Counsel for Gorham submitted that the union's allegations also fail to establish common control and direction. Nothing, for example, is alleged by the union with respect to common ownership and financial control as between the responding parties. CUPE's assertions concerning the day-to-day supervision by City employees of the non-union employees are insufficient, says counsel, when one considers that in a typical municipal subcontracting arrangement, the City is obliged to supervise the contract to agreed standards as part of its overall accountability to the public. Moreover, it defies credulity for the union to claim that the contractors have ceded to the City the right to fire the contractors' employees.

28. The union, counsel contends, has also failed to demonstrate in its pleadings the mischief that subsection 1(4) was intended to avoid. In that regard, there is no assertion by the union that Gorham was created as an instrument of the City to avoid its collective bargaining obligations to CUPE.

29. With respect to the many grievances filed by CUPE against the City, and the arbitration test case, counsel for Gorham urges the Board to consider that the union's dispute is largely a contractual matter. It wants to optimize work opportunities for its members. The Board should not permit CUPE to achieve that objective through the application of subsection 1(4), when it has the means to achieve it under its collective agreement with the City. Otherwise, the Board will be countenancing the application of subsection 1(4) as a sword rather than a shield, which will have the effect of binding the responding party contractors inadvertently to the labour relations between the City and CUPE.

CUPE

30. Counsel for the union submitted that in applications of this kind, where employers are required by the Act to adduce all the evidence within their knowledge concerning the allegations of the trade union, the Board must, and does, exercise considerable restraint in the entertainment of preliminary motions to dismiss. The reason is described succinctly at paragraph 29 in *Oxville Homes Ltd.*, [1998] O.L.R.D. No. 345, Board File No. 2097-95-R (January 29, 1998), where the Board observed that:

...in related employer and successor employer applications there is a low threshold for an applicant making such an application because the pertinent information is in the domain of the responding parties, and the applicant is likely only peripherally aware that there may be some relatedness or successorship as between companies...

31. And in *Kingston, Frontenac, Lennox and Addington Community Care Access Centre and Providence Continuing Care Centre (St. Mary's of the Lake Hospital location)*, [2002] OLRB Rep. September/October 863, the Board wrote at paragraph 30 and 32:

...The Board will only exercise its discretion to dismiss a complaint on the grounds that it does not disclose a *prima facie* case in the clearest of cases where there is no reasonable likelihood that the complaint can succeed (see *Elizabeth Balanyk*, [1987] OLRB Rep. Sept. 1121 and *Paiva Foods Limited*, [1985] OLRB Rep. May 690).

that there has been a sale of a business. The focus of the inquiry under both section 1(4) and section 64 [now section 69] is the total economic organization, not just the employees or the work performed..."

It is only in the most unusual circumstances then that the Board will dismiss an application under subsection 1(4) or section 69 of the Act on a preliminary basis. The Board must be convinced that it has all of the facts with respect to the alleged sale through the application or the agreement of the parties and that it could not make the declaration sought. The Board will only dismiss an application under subsection 1(4) if it can say that, assuming that the two entities are related, the Board would not exercise its discretion to make the declaration...

32. The mere fact that a trade union may be asserting a unique set of circumstances is no reason to dismiss a successorship or related employer application. Section 69 and subsection 1(4) are designed to deal with new and complex arrangements. In this case, the union is alleging, in considerable detail over the span of 131 paragraphs of pleadings, that the City and the responding parties are engaged in a joint public-private endeavour, and that as a result, CUPE has lost nearly 300 jobs in a distinct area of the bargaining unit. The union contends that the degree of functional integration between the City and the contractors raises the question whether the City is, for labour relations purposes, the true employer of the contractors' non-union employees. Moreover, the Board itself has contemplated the possibility that subcontracting relationships can be subject to subsection 1(4)¹. It is no answer by the responding parties to claim that they simply engage in typical contractual relations with one another. Therefore, says CUPE, the union has more than sufficiently grounded its application and is entitled to proceed to a hearing.

33. With respect to the deferral to arbitration argument of the responding parties, CUPE characterizes this as a "red herring". The union points out, there are only two parties – the City and CUPE – in the arbitration proceeding, whereas there are an additional nineteen parties in the matter before the Board. In addition, only the Board, and not an arbitrator, has jurisdiction to deal with the question of relatedness among the responding parties.² Moreover, even if there is a strong contractual dispute as between CUPE and the City, that does not mean that the issue of relatedness between the responding parties is of no significance. Nor does resolution of the grievance by arbitration necessarily mean that the issues in the proceeding before the Board will be resolved.

Analysis

34. I turn first to the arguments concerning the allegation of a sale of business.

¹ *Charming Hostess Inc.*, [1982] OLRB Rep. April 536, at paragraph 44. The Board observed at paragraph 44 that subcontracting relationships may be viewed as a form of joint venture where the purchaser of services exercises close control over the employees delivering the services, and the subcontractor is effectively dominated by the purchaser, thus leading to the inference that the subcontract is introduced for the purpose of allowing the purchaser to have the same work performed in much the same way as before but beyond the reach of its collective agreement.

² *Remembrance Services Inc. v. United Food and Commercial Workers International Union, Local 175*, [2001] O.J. No. 2247 (ON SCJ) at paragraph 19. And see *Kitchener-Waterloo Record, A Division of TDNG Inc.*, [2003] OLRB Rep. September/October 851, in which the Board cited the *Remembrance Services Inc.* decision, and refused to defer the section 69/1(4) application and unfair labour practice complaint to arbitration on the basis, among other things, that the parties in both proceedings were not identical.

35. In *Durham Access to Care*, [2000] O.L.R.B. Rep. 855 (October 25, 2000), the Board was faced with a similar preliminary motion by the responding parties to dismiss the two trade unions' sale of business allegations (as well as their related-employer allegations). One of the trade unions, an SEIU Local, had bargaining rights for homemakers of one responding party ("the Red Cross"). The other trade union, ONA, was the bargaining agent for homecare nurses of two other of the responding parties ("the VON" and "St. Elizabeth"). Both SEIU and ONA wished to bind all of the remaining responding parties to the collective agreements they had with the Red Cross, the VON and St. Elizabeth.

36. One of the responding parties sought to be bound by SEIU and ONA was Durham Access to Care ("DATC"), an agency of the Ministry of Health. DATC purchased long-term care services from outside non-profit and for-profit service providers, through a request-for-proposal ("RFP") process. Successful bidders were funded, and their budgets supervised, by DATC on behalf of the Ministry of Health. The Red Cross, the VON and St. Elizabeth participated in the RFP process, and as a result, they all lost some of the work opportunities to the other service providers. The successful service providers continued to provide the same services to the same clients that the Red Cross, the VON and St. Elizabeth and their unionized staff had previously served. In SEIU's case, it alleged that many of its Red Cross bargaining unit members ended up employed by some of the responding party service providers. All of the responding parties in either matter were separate corporate entities with no common ownership.

37. The Board dismissed the portion of the applications relating to a sale of business. In doing so, the Board stated at paragraph 52:

The Board has consistently held that, except in exceptional circumstances, a continuity of work or employees alone is not sufficient in and of itself to find a successorship. That is because the Board has found that bargaining rights do not attach to work, nor does the acquisition of bargaining rights grant a right to the continuation of particular work...

38. In the oft-cited decision in *Metropolitan Parking Inc.*, [1979] O.L.R.B. Rep. December 1193, an operator (the predecessor) of a parking lot owned by a third party was displaced by another operator (the successor) through a competitive bidding process. The successor placed advertisements to hire staff, and ended up hiring a substantial number of the predecessor's union and non-union employees. Those employees essentially continued on with the successor in the same positions and using the same tools and equipment (owned by the third party). The predecessor's union argued that the business of operating the parking lot had been transferred from the predecessor to the successor, thus constituting a sale of business.

39. The Board carefully and methodically reviewed the history and purpose of, as well as the jurisprudence flowing from, the sale of business provisions. The Board recognized that the term "business" in the Act must by necessity have a very broad meaning in order to capture the extremely broad range of economic activities captured by the statute, and that the particular elements of what constitutes a business will vary depending on the type of industry, environment or context in which an entity or enterprise operates. That being said, the Board was able to describe the organic qualities of any business, as "a combination of physical assets and human initiative...a *dynamic* activity, a 'going concern', something which is 'carried on'...an organization about which one has a sense of life, movement and vigour" (§ 30, emphasis in original).

40. The Board ultimately determined that the re-employment of the predecessor's employees by the successor was not sufficient to establish a transfer of the predecessor's business, or part thereof, to the successor. At paragraph 44 of the decision, the Board stated:

For a transaction to be considered a "sale of business" there must be more than the performance of a like function by another business entity. There must be a transfer from the predecessor of the essential elements of the business as a block or as a "going concern." A business is not synonymous with its customers or the work it performs or its employees. Rather, it is the economic organization which is used to attract customers or perform the work. The Legislature could have provided for the continuation of bargaining rights whenever there is a continuity of the work performed, but it did not do so. Bargaining rights are continued only when the employer transfer *his* business. The use of the active verb and possessive pronoun is not insignificant.

41. The union in this matter is essentially alleging that there has been a transfer of work normally performed by the City's employees to third party contractors and their non-union staff, and/or that the City is the true employer of the contractors' employees. In addition, CUPE contends that the City from time to time provides safety apparel and equipment to some of the contractors, and also provides certain materials, such as fertilizer and asphalt. There is also an allegation that the City "supplied" some contractors with a trailer and a City-owned sand sifter machine to do sand sifting work. According to the union, some contractors are permanently assigned specific areas of the City in which to perform work. However, there is no allegation that the City has transferred ownership of any operational equipment to the contractors. In fact, it is conceded that the contractors own or lease their own equipment.

42. Assuming without deciding that something has been transferred from the City to the contractors, the question remains, could it constitute a business or a part thereof, that is "a combination of physical assets and human initiative...a *dynamic* activity, a 'going concern', something which is 'carried on'...an organization about which one has a sense of life, movement and vigour"? In my view, the alleged transfer of work and the provision of fertilizer, asphalt, safety equipment and so forth could not constitute the transfer of a viable, identifiable economic vehicle from the City to the contractors. At best, what has been transferred to the contractors is the work itself (a typical feature of any subcontracting relationship) and a minor collection of assets, none of which can arguably be described as the City's business or a part of the City's business. The union's pleadings, taken at their highest, simply do not make out a case under section 69 of the Act.

43. I turn next to the related-employer portion of the application.

44. The union has more than mere superficial knowledge of the relationship between the contractors and the City. The application is unusually lengthy and detailed with respect to the allegations of control by the City over the other responding parties. And yet, the union is largely silent with respect to the history of the City/contractor relationships. It did not respond to the assertion of the responding parties that the City and the contractors have long-standing associations, and that generally the contractors' employees have been working alongside bargaining unit employees in surface operations since, and even prior to, amalgamation. However, the collective agreement itself refers to contracting out by the City's predecessors since before 1986.

45. Moreover, the union does not allege that there has been a net loss of jobs in the bargaining unit as a whole. It does not claim any layoffs or terminations, nor does CUPE identify any individual who has been prejudiced by the allegedly increasing reliance by the City upon outside contractors. The erosion of bargaining rights is described as a loss of work opportunities in a discrete part of the bargaining unit.

46. In *Canadian Red Cross Society (Ontario Zone)* 2001 CanLII 7224 (ON L.R.B.), the Board dealt with a preliminary motion to dismiss the section 69/1(4) application on the basis that, assuming all the trade union's allegations to be true and provable, the application did not make out a case for the orders sought. The trade union held bargaining rights with the Red Cross in three bargaining units. The Red Cross ceased operating its homemaking services, which reverted to CCAC (Thunder Bay) as the statutory authority under the *Long Term Care Act* to coordinate and assign homemaking services to pre-qualified agencies via a request-for-proposal process. CCAC (Thunder Bay) assigned the Red Cross work to Comcare Canada Ltd. ("Comcare") and the Victorian Order of Nurses ("the VON"). A significant number of the Red Cross employees obtained employment with Comcare or the VON, and continued to provide the same services to the same clients they had served while employed by the Red Cross.

47. The Board dismissed the portion of the application pertaining to subsection 1(4). In reaching this conclusion, the Board assumed, without deciding, that the applicant had established that the VON and Comcare were under common control or direction of CCAC (Thunder Bay). However, in light of the Court of Appeal's decision in *Ontario Legal Aid Plan v. Ontario Public Service Employees Union*, [1991] 6 O.R. (3d) 481, the Board also considered why CCAC (Thunder Bay) exercised that control. In that regard, the Board found that CCAC (Thunder Bay) was a statutory body which had no organizational connection with the various service providers under its control. The Board noted that the trade union in that case had made no assertion that Comcare and the VON shared a corporate structure, or were organizationally linked to CCAC (Thunder Bay). In fact, Comcare and the VON were competitors, and their rivalry was their only common link to CCAC (Thunder Bay). Ultimately, the Board could not find any of the indicia of relatedness, except an interrelationship of functions between the respondents. There was no representation to the public as a single integrated enterprise, nor was there any direct financial control or common ownership. The responding parties all operated from different premises. The employees were not confused as to whom they were working for. There was no suggestion of centralized control of labour relations.

48. This case shares a number of similarities with the circumstances in the *Canadian Red Cross* case. There is clearly an interrelationship of functions between the City and its contractors. But CUPE makes no allegation that the responding contractors have any connection to one another, except through the City. The union does not claim there is common ownership or common management or even beneficiaries in common among any of the contractors. CUPE does say the City exercises extraordinary control over the contractors' work, but it does not suggest that this equates to financial control over the contractors. In fact, it did not dispute the assertions of the responding parties that the vast majority of the contractors have sources of revenue other than the City's work. Moreover, the union appears to have no compelling answer to the City's assertion that it is a creature of statute, mandated to provide municipal services, and that that is the reason it exercises control over the work regardless of whether it is performed by its own unionized employees, or the employees of third-party contractors.

49. In *Federated Building Maintenance Company Limited*, [1985] OLRB Rep. November 1585, at paragraph 33, the Board stated:

...while many subcontracting arrangements might arguably fall within a literal reading of the language of section 1(4), we do not think the statute was ever intended to collapse the vast majority of bona fide subcontracting relationships. Section 1(4) is clearly discretionary, and should be applied only where there is clear evidence of the mischief it was intended to avoid.

50. I would not exercise my discretion to grant a section 1(4) declaration in this matter, which would have the effect of collapsing the City's municipal subcontracting relationships. The union has not pled facts which, assuming them to be true and provable, would cause me to declare that the City and the contractors are one employer for the purposes of the Act. It appears clear to me that the impetus for the filing of the application is a perception by the union of an expansion of the City's surface operations responsibilities coupled with a decrease in the utilization of union personnel in that particular section of the bargaining unit. CUPE expected an expansion of work opportunities for its bargaining unit members in that discrete area. The union does not, however, assert that there has been a net loss of work opportunities in the bargaining unit *as a whole*. I cannot see, then, how there is any reasonable likelihood the Board would conclude that the union's bargaining rights with respect to the inside/outside unit have been eroded. The purpose of subsection 1(4) is not the expansion of bargaining rights, but to prevent their erosion.

51. This conclusion is compounded by the fact that CUPE has comprehensive collective agreement language in place which defines and contemplates contracting out, and prescribes certain limitations on the City's authority to contract out bargaining unit work. For example, article 22.3, prohibits contracting out work usually performed by members of the bargaining unit if as a result, a layoff or reduction of hours of work of any employee, (other than casual employees) follows. On the other hand, article 22.4(a) states that the work which has been contracted out by the former Regional Municipality of Ottawa-Carlton and the former City of Ottawa prior to 1986 may be contracted out at the Employer's sole discretion. Similarly, article 22.4(b) recognizes the right of the pre-amalgamation municipalities to carry on with contracting out relationships for the duration of the collective agreements under which they operated so long as the City provides the union with specific information. Finally, article 22.4(c) appears to suggest that, under certain conditions (one of which includes that there be no layoffs or reduction in hours of work of the CUPE bargaining unit members) the City may contract out work that would otherwise be bargaining unit work to a firm or private contractor instead of carrying out the work itself using its own employees.

52. The precise interpretation of the content and interaction of these clauses is not for the Board's determination. That is a matter for a board of arbitration, which is precisely the forum the parties to the collective agreement have chosen to sort out a plethora of contracting out disputes between them. In fact, the City and CUPE await a binding arbitration decision to determine the extent of the contracting out protection in surface operations. In my view, the subsection 1(4) portion of the application is essentially a reiteration of the collective agreement dispute over the extent of the protection of bargaining unit work. As such, no labour relations purpose is served by the Board inquiring further into it.

53. For all these reasons, the application is dismissed.

1163-06-U Pearl Long, Elaine Gilbert, Martha Koch, Tanya Ottewell, Wendi Shropshire and Allan Wood, Applicants v. Canadian Health Care Workers Union, Responding Party v. **The Corporation of the County of Grey operating as Grey Gables County Home for the Aged**, Intervenor

Collective Agreement – Duty of Fair Representaiton – Trade Union – The six applicants, members of the respondent trade union, CHCW, had filed lay off grievances that were scheduled for arbitration – During a displacement campaign by OPSEU, the members were advised that their grievances would be withdrawn should the members vote for OPSEU – OPSEU was successful and, prior to OPSEU providing a letter to CHCW that OPSEU would act as agent and incur all costs for the grievances, CHCW withdrew the grievances – The Board first found that CHCW's campaign statement--that it would withdraw the grievances--was not a breach of s. 76, since its actions were a reasonable interpretation of its obligations on the loss of representation rights – The Board also found that CHCW's withdrawal of the grievances, prior to hearing from OPSEU, did not breach s. 74 since nothing required a defeated incumbent union to "keep alive" outstanding grievances against the possibility that the incoming union might seek its permission to act as agent with proper cost protection – Accordingly the Board found, in the absence of any obligation by OPSEU to request agency for carriage of the grievances or any reasonable expectation that it would do so, that the withdrawal of the grievances accorded with CHCW's institutional interests and were not a breach of the Act – Finally, once CHCW received OPSEU's letter, the Board found CHCW's failure to take any action to retract its withdrawal could not be a breach of its duty since it could no longer unilaterally accomplish this – Application dismissed

BEFORE: *Corinne F. Murray*, Vice-Chair.

APPEARANCES: *David Wright, Ed Ogibowski* and Pearl Long appeared on behalf of the applicants; *Sherry Pettigrew* and *Joe Daignault* appeared on behalf of the responding party; *David I. Wakely, Shirley Person* and *Grant McLevy* appeared on behalf of the intervenor.

DECISION OF THE BOARD: June 11, 2007

1. This application raises a set of novel allegations with respect to the "duty of fair representation". The allegations relate to:

- (i) what the incumbent union Canadian Health Care Workers ("CHCW") indicated about its future disposition of the applicants' lay-off grievances in the event that it lost the Board-ordered representation votes in two displacement applications filed by the Ontario Public Service Employees' Union ("OPSEU");
- (ii) CHCW's withdrawal of those grievances the day after the votes and its losses were known; and,

- (iii) CHCW's failure to do anything in response to OPSEU's subsequent request to become the agent of CHCW for the purpose of the applicants' grievances at a scheduled arbitration.

2. The responding party and intervenor The Corporation of the County of Grey operating as Grey Gables County Homes for the Aged ("Grey Gables") each requested that this application be dismissed on the basis that the application had not established any breach of CHCW's duty under section 74 toward the applicants. This decision considers these requests based upon arguments made by all parties regarding the legal implications of undisputed facts.

The Facts

3. Until May 31, 2006, CHCW was the certified bargaining agent for employees of Grey Gables who were members of two bargaining units, one full time and one part time. Each of the applicants was a member of one of these units.

4. On that date, the Board issued two certificates making OPSEU the bargaining agent for these units based upon the results of two Board-ordered representation votes held on May 17, 2006. Immediately after the ballots were counted, the results had been revealed to CHCW, OPSEU and Grey Gables.

5. At the time of the campaign provoked by the OPSEU's displacement applications, the applicants' grievances, filed in December 2005 challenging lay-off notices they received earlier that month, had been scheduled for arbitration on June 26, 2006.

6. In that campaign prior to the representation votes, the CHCW distributed some leaflets that urged the voters to "Know the Facts" and included in the list of "Facts" that:

"On June 26th, 2006 the scheduled arbitration with CHCW will be withdrawn if you leave Canadian Health Care Workers. (**Arbitrator K.A. Hinnegans [sic] states in his decision, a displacing Union does not have the carriage of another Unions [sic] grievances**)"

(emphasis in original)

In another one of its communiques addressed to its members, CHCW included a statement about what would happen to those grievances if OPSEU won the vote:

"The grievances, which are scheduled for Arbitration dealing with the improper lay-off, cannot be carried forward by OPSEU and **will be lost.**"

(emphasis in original)

7. On the day after the vote, a CHCW representative sent a letter by fax and regular mail advising an administrator of Grey Gables (with copies to the six grievors/applicants) that the lay-off grievances were withdrawn and that CHCW would be advising the arbitrator by letter of its withdrawal.

8. By letter dated May 19, 2006, the President of OPSEU informed the President of CHCW that OPSEU had learned of CHCW's "communication to employees and Grey Gables" that the grievances would be withdrawn. OPSEU indicated a desire "to assume responsibility for

any and all outstanding grievances, including those that are scheduled for arbitration.” OPSEU thus requested that CHCW make OPSEU its agent for the purposes of ensuring “the rights of the employees will be protected.” OPSEU added that it would assume responsibility for all costs related to the handling of the grievances, including any costs related to any arbitration hearings. OPSEU’s letter concluded by advising CHCW that if CHCW were to refuse to “transfer responsibility for all outstanding grievances to OPSEU” then OPSEU would support and fund the filing and litigation of duty of fair representation complaints at this Board against CHCW by the affected employees.

9. CHCW never responded. Consequently it never agreed to allow OPSEU to act as its agent with respect to any grievances outstanding prior to the Board’s decisions of May 31, 2006 that declared OPSEU as the bargaining agent for these bargaining units. As a result, the applicants have lost their rights associated with their grievances that were scheduled to go to arbitration within the month following OPSEU’s certification. The applicants’ lay-offs did not result in the loss of their employment.

Summary of Arguments and Analysis

10. The applicants’ contention is that CHCW’s determination to withdraw the applicants’ grievances in the event it lost the representation votes and subsequent withdrawal of them occurred during a period when CHCW continued to be the applicants’ bargaining agent. CHCW failed to fulfill its duty of fair representation pursuant to section 74 of the Act because these actions were solely tied to the outcome of the representation votes and penalized the applicants for its loss of bargaining rights. Distribution in advance of the vote of CHCW’s printed campaign material indicating its determination to withdraw the grievances if it lost the vote was an attempt to intimidate and coerce employees, contrary to the Act, into supporting CHCW.

11. By this application the applicants seek to “revive” their withdrawn grievances and obtain a direction from the Board requiring submission of their grievances to arbitration without any opportunity for Grey Gables to raise any objection before the arbitrator due to CHCW’s previous withdrawal. Also sought is an order requiring CHCW to bear the cost of compensating the applicants for any losses between June 26, 2006 and the first day of the new arbitration and an order that Grey Gables be liable for the grievors’ damages and other remedial consequences for the period commencing from the first day of arbitration until its conclusion, in addition to the period until June 26, 2006.

12. The applicants assert that there is an obligation under section 74 of the Act for their outgoing bargaining agent to transfer, through agency arrangements, the carriage of their grievances to their incoming bargaining agent if there is no adverse consequence to this. They assert that these sorts of agency arrangements are what happens “in reality”, as exemplified by the facts in *Kensington Village and S.E.I.U., Loc. 220 (Haggerty)(Re)*, (2002) 106 L.A.C. (4th) 14 (Rayner).

13. The applicants also assert that CHCW violated section 74 of the Act because its decision to withdraw the grievances in the event it lost the representation votes failed to consider the merits of the grievances or otherwise failed to properly assess the rights of the applicants, including completely disregarding the critical consequences of the loss of those rights. “Bad

faith" is particularly evidenced in its decision because it exhibited hostility or ill-will toward the applicants by tying their rights to the adverse outcome of the votes.

14. The applicants further argue that CHCW's announcement in advance of the representation vote of its decision to withdraw all grievances, if it lost, is contrary to section 76 of the Act. This also undermines the democratic principles underlying the Act that are designed to protect employees from threats and undue influence as they make their choice of bargaining agent. CHCW was using these grievances essentially as a means to try to induce those who were grievors or sympathetic to them to vote for CHCW if they wanted their grievances to survive.

15. Since there was an ongoing obligation upon an outgoing union to represent employees in a bargaining unit in conformity with section 74 of the Act until the Board certifies another bargaining agent (*Kevin Reed*, [1990] OLRB Rep. November 1152), all of the actions of CHCW with respect to the applicants' grievances should not receive any different consideration simply because CHCW's representation rights would, at some future point in time, end upon the issuing of the Board's certification decisions. Prior to those decisions, CHCW was obliged to take into consideration OPSEU's proposal that entailed no cost consequences. Once this had been addressed by OPSEU in its letter of May 19, 2006, CHCW's failure to retract its decision to withdraw the grievances effectively penalized the grievors for the loss of its bargaining rights and totally disregards the merits of their situation.

16. CHCW argues that when employees have the right to democratically choose their bargaining agent in a displacement situation, they also have a right to know what the consequences are if the incumbent is voted out. CHCW's distributed documentation told voters in advance of the vote about its intention to withdraw the grievances in the event it lost. What it did after it lost is nothing more than acting upon that intention. CHCW emphasized that this application is not a scenario of "What Ifs" with respect to these grievances, e.g. what if CHCW had called OPSEU to discuss the transfer of the grievances etc. CHCW had no obligation to contemplate this or any other "what ifs" regarding OPSEU's potential conduct.

17. CHCW emphasized the fact that OPSEU "waited" until after CHCW's withdrawal to attempt to take over these grievances. The CHCW had made no secret of what it intended to do and was entitled to act as it did based upon the information available at the time. CHCW had no information that OPSEU would take these grievances over completely and it was, therefore, free to end immediately any continuing cost consequences of outstanding grievances.

18. The decision of Arbitrator Hinnegan in *Re Parkwood Hospital and Canadian Health Care Workers*, (1998) 77 L.A.C. (4th) 192 was the basis for its actions throughout the campaign and in the composition of its letter of withdrawal. In that arbitration, CHCW had tried to go forward as the newly certified bargaining agent with grievances filed by the predecessor union and was unable to do so. Thus the content of CHCW's flyers and other campaign documentation was simply the facts that the CHCW thought that the grievors should know in advance.

19. CHCW was entitled to act on its expressed intention to withdraw the grievances without waiting until the Board's decision was issued certifying OPSEU. From this perspective, the only thing at issue is the timing of the CHCW's actions, not the actions themselves. CHCW acted prudently and in its own interests as a small union that did not want to incur a cancellation

fee from the arbitrator. There was no sinister intent because everything went according to what had been published in advance.

20. CHCW argues that if this application were successful, the remedial impact upon it as the predecessor union should be limited to May 31st. Therefore, liability for any damages that an arbitrator could assess for the period between June 26, 2006 and the date the arbitration actually gets underway would be an "unlawful extension" of CHCW's responsibility. In addition there is no fairness to this extension because CHCW has no control upon the date the arbitration would get underway.

21. Finally, CHCW could not take back what it had written in its letter of May 18th. Grey Gables had received it and the matter was finished. There was nothing more CHCW could have done to change that. Again, CHCW questioned why OPSEU had not acted immediately to advise CHCW of its intentions to take these grievances on.

22. Grey Gables's position is very simple. There is only one issue, i.e. whether CHCW had the legal authority to withdraw these grievances the day after it lost the representation vote. Even if there is some doubt about CHCW's legal authority, a revival of grievances from an expired collective agreement presents worse than usual difficulty for Grey Gables because certain actions have been predicated upon these grievances having been withdrawn. Also since the revival of these grievances could entail a change in the situation of other bargaining unit members, past or present, notice to those members would be required. It also is not entirely clear that if OPSEU had had carriage of the grievances whether they would have necessarily been carried forward to arbitration.

Decision

23. Section 74 of the Act prohibits a trade union from acting in a manner that is arbitrary, discriminatory or in bad faith. It thus imposes a barrier against the corruption of the motivations of bargaining agents as they manage the expectations of individuals and reconciles them with collective rights inherent in bargaining units.

24. A necessary starting point for consideration of CHCW's conduct is what it said during the campaign. A major implication of the applicants' argument is the circumscribing of acceptable electioneering prior to a representation vote since one of their submissions is that CHCW engaged in prohibited "intimidation" and "coercion" when it published its intention to withdraw the applicants' grievances in the event it lost the representation votes.

25. A significant democratic principle operative in campaigns in advance of a representation vote held under the Act is the protection of the free flow of information reasonably connected to the workplace issues. Predictions of future events or actions if the voting favours one party or the other are a normal part of that flow and, so long as no provision of the Act is violated, ought not to be restricted.

26. I am not convinced that CHCW's actions violate section 76 of the Act because its statement of what it planned to do with respect to its carriage of the applicants' grievances in the event it lost the representation votes was not an unreasonable or illegitimate portrayal of the

future based upon CHCW's information at the time, i.e. when there was no indication from OPSEU that it would wish to become its agent if it ended up the winner.

27. CHCW's interpretation of the decision of Arbitrator Hinnegan in *Parkwood Hospital, supra*, as its authority for its right to withdraw the applicants' grievances if it lost the representation votes could fairly be regarded as overly broad; however, I am not convinced that its interpretation was unreasonable or indicative of a corrupt motivation due to either bad faith or arbitrariness. At its highest, CHCW had a mistaken notion about the imperative of its withdrawal of the grievances in the event of a loss (see *I.T.E. Industries Limited*, [1980] OLRB Rep. July 1001, at para. 19 where the Board comments that honest mistakes are not violations of section 74 of the Act).

28. The determination by Arbitrator Hinnigan was only that the displacing union could not take carriage of grievances outstanding at the time of the transfer of bargaining rights where the incumbent union has not appointed the displacing union as its agent for that purpose. Nevertheless, a reasonable corollary of that determination is that if the displacing union does not seek appointment as agent with suitable protects against cost and other consequences, the outgoing union can opt to withdraw grievances with arbitration dates beyond their representation period at the earliest point to "cut its losses". In the circumstances of its interpretation, it is thus understandable that CHCW did not take anything else into account, such as the merits of the grievances or the impact on the applicants of their withdrawal.

29. Moreover, CHCW's notification to the members of the bargaining unit about its intention to withdraw the applicants' grievances was a fair thing to disclose in the context of the campaign. Indeed, it has the benefit of informing the competing union of its intentions. Although it would be naïve to believe that CHCW would not have been aware of this prospect being unappetising for some or all the members of the bargaining unit, I do not assess it to be "intimidation" or "coercion", within the meaning of section 76 of the Act or even unacceptable campaigning. At the time, withdrawal was its promised action that could conceivably occur if OPSEU displaced it as bargaining agent. Put another way, CHCW did not form its intention to withdraw the grievances for reasons independent from its construction of the probable scenario in the event of its loss of carriage due to OPSEU's victory.

30. Having considered this campaign conduct acceptable, the period after the vote results were known must be considered. There is no doubt that CHCW's duty of fair representation continued until May 31, 2006 (see *Kevin Reed, supra*) and the decision to withdraw the grievances the day after the vote results were known falls within that period ("transition period"). There was no suggestion that CHCW was required to continue to carry these grievances forward beyond the cessation of bargaining rights on May 31, 2006. There was also no suggestion that OPSEU had an obligation at any time after the vote results were known to seek CHCW's permission to assume carriage of these grievances. In the absence of such obligation, the day after the vote is no different than any subsequent day insofar as the analysis of CHCW's decision to act upon what it had indicated during the campaign it would do.

31. Given OPSEU had no obligation to make the offer it did, even if I accept that there is an obligation upon an outgoing bargaining agent to give its consent to the incoming agent carrying grievances forward if there are no financial or other negative consequences, it does not follow that the outgoing agent ought to be compelled to assume or expect during the transition

period that its consent will be sought or that it must stimulate such request by making a proposal to the incoming agent. There is nothing automatic about the assumption of agency responsibilities; there must be an offer and acceptance. It is not even possible to say that there is an established "drill" or protocol for managing the transfer of carriage of grievances from an outgoing incumbent union to the incoming bargaining agent. If there were, the arguments made in the *Kensington Village* decision, *supra*, would have arisen long before 2000. I am therefore not prepared to interpret the *Kensington Village* decision, *supra*, as proof that incoming unions in fact always propose agency arrangements (including suitable cost protection of the incumbent) that would permit carriage of grievances after the extinguishment of the representation rights and duties of the outgoing union.

32. Thus the difficulty with accepting the applicants' argument in this context is that it would effectively require a defeated incumbent union to keep grievances alive, including preparing for an arbitration slated to take place after its bargaining rights ended, during the transition period against the possibility that the incoming union *might* seek its permission to act as agent and propose the proper protections. In my view this would place too heavy a burden upon the outgoing bargaining agent.

33. There is also no evidence that, at the time it withdrew the grievances, CHCW could have reasonably expected OPSEU to make a suitable proposal for appointment as CHCW's agent for the purposes of handling the applicants' grievances. Therefore in the absence of any obligation by OPSEU to request agency for carriage of these grievances, or any reasonable expectation that it would do so, I find that the withdrawal of them on May 18, 2006 accords with CHCW's institutional interests of avoiding the ongoing burden associated with them at the earliest date.

34. For all these reasons, it was permissible for CHCW to act upon the information it had at the time of the disclosure of its intention to withdraw the grievances and the delivery of the letter of withdrawal. The duty under section 74 of the Act does not include an obligation upon CHCW to make assumptions that OPSEU might propose an agency arrangement with respect to these grievances.

35. Since I have concluded that CHCW's actions up to and including withdrawal of the grievances did not violate section 74 of the Act, the issue is narrowed to assessing the scope of CHCW's statutory duty to the applicants once it had received OPSEU's letter. The facts are plain – it did not take any steps after receiving OPSEU's offer. The assessment of CHCW's conduct at this stage must be made with due regard to the applicants' remedial request for arbitration of their grievances. As a result, the practical question is whether there was any action CHCW could have taken to revive the withdrawn grievances so that granting the remedy of arbitration would result in what likely would have occurred "but for" the violation of section 74 of the Act.

36. There must be some certainty or likelihood that CHCW could have obliged Grey Gables to accept its retraction of its withdrawal because it would be unfair to find unlawful the failure to take an action that may not, or would not, have been effective at the time and thus not have resulted in the arbitration actually occurring. This approach avoids the risk of sending grievances to arbitration as a result of the direction of the Board when CHCW's action at the time could not have achieved that result.

37. No party suggested that Grey Gables was obliged, as a matter of law, to agree to CHCW's request to change its mind about withdrawal. There was also no suggestion that there was any history in this collective bargaining relationship that would have caused CHCW to expect it could persuade Grey Gables to agree to allow it to take back its withdrawal. In the circumstances, CHCW cast a die that could not be taken back unilaterally. Therefore, the failure of CHCW to take any action to retract its withdrawal should not be the foundation for referring these grievances to arbitration, even if the inaction may have constituted a technical breach of the Act. Finally, the failure of CHCW to agree to allow OPSEU to have carriage of grievances that had been withdrawn at the time of OPSEU's request cannot constitute a breach of section 74 of the Act because there were no grievances that could be carried to arbitration.

38. For all these reasons, I find that CHCW did not breach section 74 of the Act prior to May 31, 2006, the date when subsection 62(2) of the Act terminated the then-subsisting collective agreement by certification of OPSEU as the new bargaining agent for employees of Grey Gables.

39. This application is dismissed.

2960-06-R Joseph Ryan Oliverson, Applicant v. The International Brotherhood of Electrical Workers and The IBEW Construction Council of Ontario, Responding Party v. **Dryden Electrix Inc.**, Intervenor

Practice and Procedure — Termination — Timeliness — This application under s. 66 of the Act, was filed one year to the date of the signing of the voluntary recognition agreement — The responding party argued that it was out of time, and that the applicant was not at work in the bargaining unit on the date of application — The Board found that an application under s. 66 of the Act does not fall within the construction provisions of the Board's Rules, so Rule 3.4 applies, rather than Rule 24.2 — The applicant used the services of a private courier (not Priority Post), so the application date was the date the materials were received by the Board — The applicant was on leave from the employer on the date of application, and therefore not at work in the bargaining unit on the filing date — For all of these reasons, the application was dismissed

BEFORE: *Mark J. Lewis*, Vice-Chair.

APPEARANCES: *Rich Appiah* and *Joe Oliverson* appearing for the applicant; *Ernest A. Schirru* and *Glenn Drewes* appearing for the IBEW Local 402; *Dorian N. Persaud*, *Ray P. LePage* and *Angela Berrey* appearing for the intervenor.

DECISION OF THE BOARD: May 2, 2007

1. This is an application seeking to terminate bargaining rights acquired by way of voluntary recognition filed under section 66 of the *Labour Relations Act*, 1995, S.O. 1995, c. 1 (the "Act"). The applicant is Mr. Joseph Ryan Oliverson. The responding trade union whose bargaining rights Mr. Oliverson is seeking to terminate is the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario (the "Union"). The employer is Dryden Electrix Inc. (the "Company").

2. At the first day of hearing in this matter, the Union took the position that this application should be dismissed on a preliminary basis for three reasons:

- (a) the application was not filed within the one year period established by section 66;
- (b) Mr. Oliverson was not at work, performing bargaining unit work, on the date of application and therefore did not have the necessary status to file this application;
- (c) on the date of application, Mr. Oliverson was not employed in accordance with the terms and provisions of the relevant collective agreement (the IBEW Principal Agreement) and therefore did not have the necessary status to file this application.

3. The facts relevant to the first two positions were all set out in the pleadings and other documents filed by the parties. The third position required the calling of *viva voce* evidence and Mr. Oliverson, Mr. Ray Lesage, an owner of the Company, and Mr. Glen Drewes, the Business Manager of IBEW Local 402 (Thunder Bay) all gave evidence with respect to it.

Timeliness

4. The voluntary recognition agreement binding the Company to the IBEW Principal Agreement was signed on December 20th, 2005. This application was received by the Board by Purolator delivery on December 20th, 2006. The Form B-69, Confirmation of Filing, issued by the Board's Registrar on December 27th, 2006, lists the date of filing for this application as being December 20, 2006.

5. Subsection 66 (1) of the Act states as follows:

66. (1) Where an employer and a trade union that has not been certified as the bargaining agent for a bargaining unit of employees of the employer enter into a collective agreement, or a recognition agreement as provided for in subsection 18(3), the Board may, upon the application of any employee in the bargaining unit or of a trade union representing any employee in the bargaining unit, during the first year of the period of time that the first collective agreement between them is in operation or, if no collective agreement has been entered into, within one year from the signing of such recognition agreement, declare that the trade union was not, at the time the agreement was entered into, entitled to represent the employees in the bargaining unit.

6. All of the parties agreed that this subsection requires applications to be brought within the first year, which in this case would be on or before December 19th, 2006. None of the parties argued that the Board had any discretion to, and/or in any event should in the circumstances of this case, vary this time period established by the Act. Rather, Mr. Oliverson and the Company both asserted that the filing date for this application was actually December 19th, 2006, and that it had therefore been made on the last day of the one year period provided for in subsection 66 (1). They both argued that the application had been sent to the Board by Purolator overnight delivery on December 19th, 2005, as confirmed by Purolator weigh bills (a fact that was not contested by the Union) and that therefore, even though the application had not been received by the Board

until the following day, pursuant to Rule 24.2 of the Board's Rules of Procedure, the filing date was the date on which it was sent as opposed to the date on which it was received.

7. The Applicant's and Company's assertions concerning the filing date are incorrect for two distinct reasons.

8. Rule 24.2, as one of the rules within Part V of the Board's Rules of Procedure, applies to certain specific proceedings which relate exclusively to the construction industry, for example an application for certification in the construction industry. As is made clear by Rule 26, Part V of the Rules does apply to certain applications to terminate bargaining rights in the construction industry, specifically those made under section 63 or 132 of the Act. However, an application to terminate bargaining rights acquired by voluntary recognition made under section 66 of the Act is not an application which is exclusive to the construction industry. Section 66 falls within the general, rather than the construction industry, portion of the Act. This section applies equally to all employers, unions and employees and it is in no way limited to construction employers, unions and/or employees as defined by section 126 of the Act. Therefore applications under section 66 are governed by the normal rules as opposed to those for applications which are exclusive to the construction industry even when the bargaining rights in issue relate to the construction industry.

9. Rule 3.4 states the following:

3.4 Except for applications covered by Part V [Construction Industry] of these Rules, the date of filing is the date a document is received by the Board at its office.

10. This application is not covered by Part V of the Act. Accordingly the date of filing is December 20th, 2006 as this is the date that this application was received by the Board.

11. Further, even if this application was covered by Part V of the Act, the date of filing would still be December 20th, 2006. Rule 24.2 which reads as follows, is quite clear:

24.2 The date of filing is the date that a document is received by the Board. However, if an application is sent by Priority Courier, the date of filing is the date on which the application is sent (as verified by the Post Office).

The date an application is sent will only be the filing date if the application is sent by "Priority Courier" and that date must be confirmed by the "Post Office". This application was sent to the Board by a private courier company, Purolator. As the Board has made clear in such cases as *Maura Roofing Ltd.*, [2002] OLRD No. 807, Board File No. 3383-01-R (March 1, 2002), Priority Courier is a specific method of delivery offered by Canada Post and is not delivery by some other carrier (or even by a different delivery method offered by Canada Post). Further, the weigh bills of a private company, however well known, do not constitute confirmation by the Post Office. This may seem archaic but there is a clear policy rational for this rule. Certainty is a critical requirement for establishing filing dates. The Priority Courier service and the confirmation of the date of sending provided by Canada Post are standard across the Province, and indeed the country. This standardization, provided by a specific method of delivery made and confirmed by a Crown Corporation, offers the Board a degree of certainty which having to deal with a myriad of private delivery companies offering a variety of services would not. Therefore, as this

application was not sent by the method stipulated in, and with the confirmations required by, the second sentence of Rule 24.2, even if this application had been covered by Part V, pursuant to the first sentence of Rule 24.2, the filing date would still be December 20th, 2006, as this is the date on which it was received by the Board.

Mr. Oliverson's Status

12. As noted above, all of the parties asserted that this was an application seeking to terminate a construction industry collective agreement, namely the IBEW Principal Agreement. Further, all of the parties agreed that Mr. Oliverson was not at work, performing bargaining unit work, on the date of application (or even on December 19th) having been granted a leave by the Company on December 10th, 2006. Therefore, the Union argued that he did not have the necessary status to bring this application and it should be dismissed.

13. Under the specific wording of subsection 66 (1), Mr. Oliverson is only entitled to bring this application if he was an "employee in the bargaining unit". The Board's approach to determining who is, and who is not, an employee in the bargaining unit in applications for certification and termination in the construction industry is both long standing and clear. Specifically, the Board has repeatedly stated that in order to be an employee within a construction industry bargaining unit an individual must be (at a minimum) at work and performing bargaining unit work on the date of application. The fact that an individual who was absent from work on the particular day in question may have a continuing "employment relationship" with a particular employer is simply not sufficient for that person to be an employee in the bargaining unit. The Board decisions which set out and uphold this principle are legion, and its approach was succinctly summarized, for example, by the Board in *T. E. Leroux Contracting Ltd.*, [1982] OLRB Rep. Aug. 1204, in which it stated the following:

3. The position taken by both the applicants and the intervener employer is that on the day of the making of the application and for the few days immediately preceding that date, the applicants were employed as part of a larger crew placing a concrete floor. Consequently, it is clear that although there were minimal amounts of carpentry work performed by them on the date of the making of the application, they were employed as labourers rather than carpenters. This is an application brought under section 57 of the Act. Section 57 subsection 2 reads in part as follows:

"Any of the employees in the bargaining unit defined in collective agreement may, subject to section 61, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,

(a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last two months of its operation; ..."

The legislation is clear, an application for termination can only be brought by employees in the bargaining unit. In the instant case, that is a bargaining unit consisting of carpenters and carpenters' apprentices. In certification cases involving the construction industry provisions of the Act, the Board

has consistently held that it will only look to the date of the making of the application as the date for determining the list of employees in a bargaining unit. See, for instance, *Keystone Contractors Limited* [1966] OLRB Rep. Feb. 821. The reasons for this rule is that it eliminates extensive arguments concerning the type of work being performed by employees who may or may not be in a particular bargaining unit. Counsel for the respondent trade union argued that in a termination case involving a construction union, the same test ought to be applied. Thus, the Board should look to the date of the making of the application and if there were no employees in the bargaining unit or if the applicants are not employed in that bargaining unit as in the present case, then they should not be entitled to bring such an application.

4. We are of the view that in cases involving construction trade unions the Board ought only to look at the date of the making of the application for termination, to determine the status of employees under section 57(2) to make that application. ...

14. Mr. Oliverson and the Company were unable to cite a single case in which the Board found a person who was not at work on the date of application to be an employee in the bargaining unit for the purposes of an application for termination of bargaining rights in the construction industry. Notwithstanding this they argued that this case should be an exception to the Board's practice as none of the policy reasons which underlined the Board's general principle would be effected if this practice was varied here. Specifically, they asserted that here there could be now doubt that Mr. Oliverson continued to be an "employee" of the Company as he was only off work on leave while he dealt with the consequences of a serious traffic accident which his girlfriend had been involved in. Further, it was asserted that in this case the Board need have no concern about the number of employees in the bargaining unit fluctuating as Mr. Oliverson is the only employee that the Company has ever had.

15. As has been made clear on any number of occasions, the Board's longstanding approach concerning who is an employee in a construction industry bargaining unit for the purposes of an application for certification or termination represents a balancing of competing factors. This balance is one which has been in place in this industry for a great many years and should not be swept aside because of its implications in any particular single case. In any event the facts relied upon by Mr. Oliverson and the Company as to why this case is an "exception" are not, in actuality, exceptional and do not provide any basis for setting aside such a well established Board principle. In the end result the reason why Mr. Oliverson was not at work, and assertions concerning the normal size of the bargaining unit are simply not relevant. This may appear harsh but the Board's reasoning in this respect has been aptly set out in, amongst other decisions, *Ken Anderson Electric Inc.*, [1996] OLRB Rep. Sept./Oct. 846 in which it stated the following concerning who was an employee in the bargaining unit and was therefore entitled to vote in an application for certification:

32. Does certainty and an expeditious determination of an application for certification take precedents over fairness? No, but fairness is not an absolute concept. Nor is it a concept which applies to some parties and not to others. What is "fair" depends upon the interplay of all of the interests involved. What is "fair" depends on the circumstances, and factors of certainty, expeditious resolution and the other concerns in *Crete Flooring, supra*, are properly taken into account in determining whether an approach like the one in issue in this case is "fair". It has always been up to the trade

union to decide whether and when it will make an application for certification. Subject to specific legislative parameters (and there are none for certification proceedings where there is no incumbent trade union and no bar applies), it is always up to an applicant to decide when it will apply, in any kind of case. While it is true that an applicant trade union can try to wait for an application which is advantageous to it, there are limits on its ability to do so. For example, delay in an organizing campaign generally works the detriment of the trade union, and experience suggests that the longer a trade union waits, and in a vote based system the longer a vote is delayed, the more difficult it will be for the trade union to gain or even retain support. Further, it is always the employer which controls and directs its work force, and trade unions are as susceptible to the vagaries of construction industry employment as everyone else. Further, to throw open voter eligibility would clearly cut both ways. After all, why couldn't the trade union argue that someone (who it thought would support it) has a "connection" with the workplace such that s/he should be entitled to vote notwithstanding that s/he was not at work on the date of application.

33 It is clear that there must be some "rules" for voter eligibility. That is the case for every vote or election, be it municipal, provincial, federal, a vote in a club, or a vote in a corporation (whether privately or publicly held) etc. It will always be necessary to draw a line between those who can vote and those who cannot. Sometimes it is easy to do so, and sometimes it is not. Wherever the line is drawn, there will be cases which are close to it and which will appear to create an unfairness to those who fall just on the wrong side. Under the Board's interpretation of the Act there will be cases, arguably including this one, where it may appear to be unfair to allow an approach which disfranchises someone who it appears may have a connection with the workplace. But in the construction industry it can be difficult to discern either that there is such a connection, or whether it is real.

16. Accordingly, as he was not at work performing bargaining unit work on the date of application, Mr. Oliverson was not an employee in the bargaining unit on that date and therefore does not have the necessary status to file this application even if it had been brought within the one year time period.

Conclusion

17. Therefore, based on all of the above, this application is dismissed both because it was brought beyond the one year time period established by subsection 66(1) of the Act and because Mr. Oliverson was not an employee in the bargaining unit on the date of application and he therefore lacked the status to file this application. In view of this the Board finds it unnecessary to deal with the Union's third ground for dismissing this application on a preliminary basis.

4149-06-R; 4150-06-R; 4150-06-R; 4151-06-R; 4153-06-R; 4154-06-R; 4161-06-R; 4170-06-R; 4172-06-R; 4176-06-R Brick and Allied Craft Union of Canada, Applicant v. **George & Asmussen Limited**, Responding Party v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers

and Allied Craft Workers, Local 20, Intervenors; Brick and Allied Craft Union of Canada, Applicant v. BCM Masonry o/a 2032686 Ontario Ltd., Responding Party v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors; Brick and Allied Craft Union of Canada, Applicant v. Vaughan Masonry Construction Inc. v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors; Brick and Allied Craft Union of Canada, Applicant v. Twin Masonry Inc. v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors; Brick and Allied Craft Union of Canada, Applicant v. Bernel Masonry Ltd. v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors; Brick and Allied Craft Union of Canada, Applicant v. Squire Masonry Ltd. v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors; Brick and Allied Craft Union of Canada, Applicant v. Vinmod Construction Inc. v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors; Brick and Allied Craft Union of Canada, Applicant v. Canex Masonry Ltd. v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors; Brick and Allied Craft Union of Canada, Applicant v. Mac Masonry Inc. v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors

Certification – Construction Industry – BACU filed a series of card-based applications to certify the employees in bargaining units for which it already holds bargaining rights – The union asserted it had the statutory right to seek reconfirmation of its member support – Given that the union demonstrated evidence of greater than 55% support for each unit sought, there was no need for a vote – It appeared to the Board that BACU was pre-empting any possible raids to its incumbent units – Although it expressed its reluctance to sanction BACU's conduct, the Board felt it was inappropriate to engage in a challenge to that conduct – The Board noted that such an application appeared to be an indirect application for termination of a collective agreement, and could possibly be a means of redesigning a bargaining unit without the employer's approval – Nonetheless, the Board determined it must proceed with the applications – Matters continue

BEFORE: *Corinne F. Murray*, Vice-Chair, and Board Members *John Tomlinson* and *Alan Haward*

DECISION OF THE BOARD; May 28, 2007

1. These applications for certification are unusual because the Brick and Allied Craft Union of Canada ("BACU") is requesting that the Board certify it for a second time as a bargaining agent, even though it is a party to a collective agreement subsisting at the time of the application covering the same group of employees as described in the proposed bargaining unit in each of its applications.

2. BACU has made submissions pursuant to the directions in our decision of April 12, 2007 ("prior decision"). These submissions highlight the fact that the parties whose rights arguably may have been affected by the applications did not materialize. This is problematic because the Board is bereft of any oppositional arguments to those of the applicant. The Board considered it appropriate to ask for submissions, as was done, addressing the threshold questions of why these applications were taking place and what change in the *status quo* would occur as a result of the applicant being successful. BACU submits that no explanation is required because its applications are the exercise of a right under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").

Background

3. These applications were filed under the construction industry provisions of the Act relating to the industrial, commercial and institutional ("ICI") sector of the construction industry which the applicant ("BACU") elected to have dealt with under section 128.1 of the Act.

4. In our prior decision, we found pursuant to section 113 of the Act that the applicant was a trade union within the meaning of sections 1(1) and 126 of the Act for the purposes of these applications.

5. BACU already holds bargaining rights with respect to the bargaining units for which it has applied. The applicant was certified in August of 2004 as bargaining agent for the employees of the various responding parties. The applicant and the responding parties are bound to "an ICI collective agreement applicable to Board Area 8" that covers a bargaining unit that is the same as those in these applications. This agreement is sometimes referred to as the BACU "Brick" Agreement. Its term expired April 30, 2007. These applications were filed either on March 27th or March 29th. They have been filed within the last three months of the collective agreement's operation in accordance with the timelines laid out in subsection 7(4) of the Act.

6. All the responding parties that provided the Board with the requisite information in accordance with subsection 128.1(3) of the Act agree with BACU's proposed bargaining unit description.

7. International Union of Bricklayers and Allied Craftworkers and its Locals 6, 7 and 20 ("IUBAC and Locals") received notice based upon an order of the Board dating back many years and filed identical interventions. IUBAC and Locals originally asserted that BACU cannot "re-certify itself", however, the subsequent submissions made pursuant to our prior decision appear to change that. As was noted in our prior decision, some of the responding parties (Board File Nos. 4149-06-R; 4153-06-R; 4154-06-R; 4161-06-R; 4170-06-R; 4176-06-R) raised an objection to

BACU being permitted to proceed under section 128.1 because in their view these applications are "displacements and a representation vote ought to be directed". No submissions were received from any responding party after the release of our prior decision that offered that opportunity.

8. We found in our prior decision that the applicant's proposed bargaining unit for:

"all bricklayers, stonemasons and plasterers and their respective apprentices, improvers and working forepersons in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in Board Area 8"

could constitute a unit appropriate for collective bargaining.

Submissions Received

9. The applicant was directed to make submissions within the breadth of the directions made in a companion application (Board File No. 4171-06-R), that would advise us as to what change(s) its applications seek to make, what effect these applications would have upon others' rights if the open period were shortened and whether the Board has any capability to address those effects in the context of these applications.

10. The BACU's submissions, with which IUBAC and Locals "completely concur", address only the issue relating to the effects of shortening the open period and whether any rights are impinged thereby. It is fair to summarize these submissions as an assertion that the applications constitute the exercise of "statutory rights" by those who have signed unchallenged membership evidence that were filed in support; in the absence of any countervailing statutory right, the Board has no alternative but to give BACU what is sought, i.e. certification. BACU equates the Board's concerns about its applications to a suggestion that "an incumbent union must sit back and wait to be raided before it can approach its own members and seek reconfirmation of their desire to be members of and represented by their own union." This suggestion is said to be "ideological" and without support in the Act.

11. BACU emphasises that absence of any interested party who has come forward to make any assertions, either claiming violations of the Act or an adverse effect on any rights. Without such party(ies), a "statutorily mandated result" must occur.

12. BACU did not cite any of the Board's decisions in support of its position nor did it make any comment upon the decisions cited in our prior decision or the companion decision in Board File No. 4171-06-R. The applicant does not directly answer the question of "what else can these applications deliver to the applicant than it already has?" posed in paragraph 8 of our decision and reiterated in a different form in paragraph 22 when we sought an answer to the question of "what change(s) its applications seek to make" in the status quo. Essentially BACU asserts that it has fulfilled the statutory specifications entitling it to make these applications, have them dealt with under section 128.1 and obtain certification as a result and no further explanation is necessary.

Decision

13. BACU's assertion that the Board may not deny these applications for any reasons that are not manifest in the Act is of concern. We are not convinced this assertion has merit.

14. The most important features of these applications are BACU's election that they be dealt with under section 128.1 of the Act together with the fact that none of them could obligate the Board to order a representation vote pursuant to subsection 128.1(12) of the Act because the membership evidence filed is for 55% or less of those in the bargaining unit. BACU's election thus avoids a representation vote either under subsection 8(2) of the Act, requiring a representation vote in every case, and its membership evidence eliminates the operation subsection 128.1(12) the Act.

15. BACU's applications are obviously seeking to capitalize upon the newly created card-based application process provided by section 128.1 to allow it, as an incumbent union, to play "offense" instead of its usual defensive posture during the open period. BACU's righteous assertions are understandable given the distaste of incumbents may have for the open period that potentially could include fending off a raiding union or alternatively an apparently disgruntled group of employees who could file a termination application under section 63 normally has the element of surprise on its side.

16. The historic role for a certification in our province has been "to stimulate the collective bargaining process" (see *Loblaw Groceterias Co. Ltd.* 46 CLLC ¶ 16,411). Thus, the Board in *Northern Electric Company Limited*, 63 CLLC ¶ 16,288 found that an application for certification by a party to a collective agreement for the very same bargaining unit had failed to make a *prima facie* case for certification as a "remedy" for anything. In that case, it was considered unnecessary even though the bargaining rights were originally acquired through voluntary recognition.

17. There is no apparent stimuli necessary in these applications either. While section 128.1 superficially appears to be a return to the past card-based application process for certification, at least in the construction industry, it ought to be regarded as novel due to its juxtaposition with other provisions that mandate representation votes in every non-construction application and in those applications within the construction industry where the applicant may not be able to rely upon its membership evidence alone to obtain certification.

18. In these circumstances, there is no party challenging what BACU is attempting. BACU's submissions shift to the Board the onus of identifying rights that are adversely affected by its applications. This is inappropriate. The Board's labour relations expertise should not be the starting point for the creation of hypotheticals, even if they are aimed at teasing out all of the potential issues, as a substitute for real parties whose interests are actually threatened or facts that disclose the real labour relations issues at stake.

19. That said, it is nevertheless appropriate to touch upon some concerns that these applications manipulate section 128.1 into a vehicle for the achievement of other goals rather than "to stimulate collective bargaining". Where there is an existing collective agreement that was preceded by a certificate issued to the incumbent/applicant union for the same bargaining unit, the

Board continues to have the following concerns when the incumbent union applies for re-certification:

(i) that a card-based application for certification by an incumbent may indirectly be an application for early termination of a collective agreement without the type of notice to employees given under section 58(3) of the Act that for all practical purposes creates an open period for other applications for certifications by other unions or termination applications pursuant to section 63; and,

(ii) that a card-based application for certification could become a means of redesigning bargaining units, with or without the employers' approval.

20. The impact of these applications upon the rights protected through a periodic "open season" is similar to applications under subsection 58(3) of the Act (see *Sysco Foodservice of Ontario*, [2001] O.L.R.D. No. 2366 for further elaboration of these rights). In giving its consent under subsection 58(3), the Board has always ensured that there is a replication of the open period to allow fundamental rights of employees to be exercised.

21. BACUs portrayal of its applications being no different than a displacement application by a raiding union is based upon the false premise that the process of choice for employees has been the same. The obvious difference is that when the incumbent union becomes the applicant, the process ostensibly ceases to provide any alternative for employees. When another union is the applicant, the process inherently continues to be a period during which employees exercise their right to change their bargaining agent or cease to have a representative at all. These concerns are of lesser importance in the circumstances only because *de facto* the timing of these applications and the passage of time since their filing date has effectively allowed interested parties a period to approach the Board to seek whatever remedy they might require in the circumstances.

22. Finally, it is worthy of note that the Board has been reluctant in the past to revamp or amend bargaining units already certified or created by the parties through collective bargaining (see *BA International Inc.*, [2005] OLRB Rep. January/February 20, jud. rev. dismissed [2005] November/December 1044), except when there is a proper reason to consider this action to be required (see *Ontario Power Generation*, [2005] OLRB Rep. May/June 464 or *Greater Essex County District Board*, [2000] OLRB Rep. May/June 470).

23. Our decision to proceed with these applications is simply based upon the circumstances prevailing within them and not an indication of our acceptance of the applicant's arguments that would foreclose future parties from presenting their arguments objecting to the "statutory rights" as BACU has described them.

24. The objection of the responding parties noted in paragraph 7 is to a large degree addressed in the preceding paragraphs. Their objection fails to recognize that the normal connotation of a "displacement" is two unions in contention for the bargaining rights. The novelty of these applications makes that moniker inapplicable. There is no reason not to proceed in the normal course with our determinations pursuant to subsection 128.1(4) and, given the level of membership support in these applications, there is no statutory basis for ordering a

representation vote in any of them. Specific decisions will be subsequently released to disclose in each application the relevant membership support.

3017-06-PS Ontario Public Service Employees Union, Applicant v. **Hamilton Niagara Haldimand Brant Community Care Access Centre; Hamilton Community Care Access Centre; Brant Community Care Access Centre; Community Care Access Centre Niagara; Community Care Access Centre of Halton; Haldimand-Norfolk Community Care Access Centre; Canadian Union of Public Employees and its Local 1287; Canadian Union of Public Employees and its Local 4700; and Ontario Nurses' Association Responding Parties**

Bargaining Unit – *Public Sector Labour Relations Transition Act, 1997* – Five community care access centres (CCACs) were merged – OPSEU applied to the Board for a determination of the appropriate bargaining agent and bargaining unit(s) – The applicant represents 190 of the affected employees in the single largest predecessor bargaining unit – The applicant asserts that a single “all employee” bargaining unit is appropriate, whereas the employer, CUPE and ONA assert that there should be two bargaining units: one comprised of professional employees and the other of office and clerical employees – The Board noted that both options are consistent with the purpose of s.22(7) of the Act – Finding that either a single unit or a two-unit configuration could comfortably obtain for the newly-configured CCAC, the Board signaled its preference to maintain the *status quo* where there are existing, fully functional collective bargaining relationships – In this case four of five CCACs, or approximately sixty-five per cent of employees, operated under a two bargaining unit system – Two bargaining units ordered (*Editors' note: Following the counting of the ballots, OPSEU won the office and clerical unit; ONA became the bargaining agent for the professional employees: decision dated May 12, 2007*)

BEFORE: *Brian McLean*, Vice-Chair.

DECISION OF THE BOARD: May 1, 2007

1. This is an application under sections 21, 22 and/or 23 of the *Public Sector Labour Relations Transition Act, 1997* (the “Act”). This application arises out of the government's decision to reduce the number of community care access centres (“CCAC’s”) in the province from 42 to 14 through mergers and amalgamations. The responding party Hamilton Niagara Haldimand Brant Community Care Access Centre (“HNBCCAC” or “the employer”) is one of the 14 new CCACs. The other responding parties are former CCACs which were on January 1, 2007 all or in part amalgamated into the new HNBCCAC.

2. The applicant and the responding parties Canadian Union of Public Employees Locals 1287 and 4700 (“CUPE”) and Ontario Nurses' Association (“ONA”) all represented employees of the predecessor CCACs. One or more of these unions will represent the employees at the HNBCCAC. The parties have met and settled some of the issues which need to be resolved. All agree that representation votes will be required to determine bargaining agents. However, the parties are unable to decide the scope and number of the appropriate bargaining unit(s). Accordingly, the parties filed written submissions on that issue and the Board held a consultation with the parties to receive oral argument.

3. In this application OPSEU, which represents 190 of the affected employees in the single largest predecessor bargaining unit, asserts that a single "all employee" bargaining unit is appropriate. The employer, ONA and CUPE all assert that there should be two bargaining units: one comprised of professional employees and the other of office and clerical employees.

4. By decision dated April 18, 2007 the Board issued a bottom line decision with brief reasons in which I found two bargaining units were appropriate. The Board indicated that more detailed reasons would follow. This decision contains those reasons.

The Facts

5. The facts are largely not in dispute.

6. Prior to the amalgamation there were five CCACs as follows:

Predecessor Community Care Access Centre	Number of Bargaining Units	Bargaining Unit Description	Bargaining Agent	Number of Employees 552 Total
Brant Community Care Access Centre	2	Professional Unit	ONA	41
		Office, Clerical and Technical Unit	ONA (Allied)	18
Haldimand- Norfolk Community Care Access Centre	2	Registered and Graduate Nurses Unit	ONA	31
		Office, Clerical and Professional Unit	CUPE Local 4700	20
Community Care Access Centre of Halton	2	Professional Unit	ONA	52
		Office, Clerical and Technical Unit	ONA (Allied)	17
Hamilton Community Care Access Centre	1	"All Employees" Unit	OPSEU	190
Community Care Access Centre Niagara	2	Professional Unit	ONA	129

		Office Clerical and Technical Unit	CUPE Local 1287	54
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7. CCACs play an important role in the provision health care services in Ontario. The primary functions of CCACs are to provide home and community health care services for residents and to co-ordinate admission to government funded long term care facilities. Their activities reduce the health care load of hospitals.

8. The core functions of the employer, are performed by Case Managers and Placement Coordinators with the assistance of office and clerical employees. They possess a skill mix of health care and client service expertise, which allow them to perform specific functions within the CCAC. Case Managers must, as a job requirement, be a regulated professional, such as a Registered Nurse, Occupational Therapist, Speech Language Pathologist, Certified Social Worker or Physiotherapist. All the Case Managers affected by this application are regulated professionals.

9. Case Managers' responsibilities include:

- (a) assessing the client's health care needs through input from the client, other health care professionals, and the client's family members/caregivers;
- (b) collaborating with the client on setting goals, creating timelines, and carrying out a health care plan;
- (c) determining the client's eligibility for government-funded services;
- (d) authorizing the delivery of government-funded home and community support services;
- (e) revisiting a client's health care plan as goals and conditions change;
- (f) developing a discharge plan when the client's goals have been achieved; and
- (g) providing information and referrals to the public about other community agencies and services.

10. Placement Coordinators determine an individual's eligibility for placement into a government funded long term care or cancer care facility, and if accepted, to place the individuals in such a facility. Placement Coordinators also provide information and counselling and manage the wait list related to such placements. On occasion Placement Coordinators attend the Consent and Capacity Revenue Board and appeal hearing for clients applying for a long term care placement.

11. The office and clerical staff provide administrative support to the Case Managers and Placement Coordinators. They work together with Case Managers and Placement Coordinators as a team and have a common commitment to provide the services in the best, most appropriate way possible.

12. There is a dispute on the facts about the extent of current and potential overlap of duties between clerical and professional employees. OPSEU argues that there is in fact overlap currently and the potential for further overlap in duties. The employer asserts that its plan is to have clear delineation and little if any overlap in duties between clerical and professional employees. However, it is apparent that the job of Case Manager and Placement Coordinator also overlapped at the predecessor CCACs and job duties changed over time without serious difficulty.

13. In the weeks leading up to the amalgamation the employer has developed organizational and operational plans in order to deal with restructuring and to ensure the long term delivery of quality and effective care. Following the reorganization the employer intends to maintain five branch locations in Brantford, St. Catharines, Hamilton, Simcoe and Burlington. As part of the restructuring the employer says it intends to centralize a number of job functions, at its branch locations. For example, Information Systems, Finance, Human Resources and Organizational Development, and Performance Management and Accountability will be centralized at its Hamilton branch and Head Office, Speciality Case Management Managers and Strategic Planning and Integration will be located at the Brantford Branch.

14. There is no real dispute that both bargaining unit structures worked without serious labour relations problems at the predecessor CCACs. There appears to have been no jurisdictional disputes at the predecessor employers where there were two bargaining units. There is no suggestion that the inclusion of clerical employees in the same bargaining unit as professional employees resulted in duty of fair representation complaints. Excessive strikes or other labour disputes were not a feature at any of the predecessor employers.

15. At least three employees have commenced their careers in clerical positions, obtained the education and licensing necessary to become a case manager/placement coordinator and obtained a position in the professional unit. In applying for the professional position they likely were given preferential treatment over "outside" candidates.

Arguments in General

16. The parties each made comprehensive written and oral arguments and relied on numerous authorities, all of which I have read. I will not describe these arguments in detail but will discuss them briefly in general terms as follows and then throughout these reasons.

17. In arguing for one bargaining unit OPSEU relies on the Board's preference for bigger, broader based bargaining units and the Board's justifications for that preference, including: elimination of jurisdiction disputes, reduction of the costs of bargaining and collective agreement administration and increased mobility of employees. In this case, OPSEU argues there is evidence of the potential for two bargaining units to inhibit mobility as three clerical employees have in the past achieved the requirements for a professional position and actually were hired into such a position. In a two bargaining unit scheme, they would lose their seniority. The Board's

decision in paragraphs 32-34, *Humber/Northwestern/York-Finch Hospital* [1997] OLRB Rep. Sept/Oct 872 perhaps best supports OPSEU's arguments:

32. This is not to say that "bigger is always better". However, labour relations boards across the country have all recognized the utility of broader-based bargaining structures, because they are more likely to: promote stability, increase administrative efficiency, enhance employee mobility, and generate a common framework for employment conditions for all employees in an enterprise. Bigger bargaining units also have more critical mass, so that they are better able to facilitate and accommodate change. (See the policy considerations enunciated by the British Columbia Labour Relations Board in *Insurance Company of British Columbia* (1974), 1 Can. LRB 403 - a case which, incidentally, involved a large public sector institution; and compare, in a different legal context, the decision of this Board in *Mississauga Hydro-Electric Commission*, [1993] OLRB Rep. June 523.)

33. In the absence of statutory prescriptions, there is, today, a pronounced preference for broader-based bargaining units, unless that objective collides in a serious way with the employees' ability to organize themselves. Indeed, the Board has often favoured broader-based bargaining units, even in certification situations, where the shape of the unit may well influence whether there will be any collective bargaining at all. The Board has recognized that the *structure* of collective bargaining "*matters*" - as it noted in cases such as *Board of Governors of Ryerson Polytechnical Institute*, [1984] OLRB Rep. Feb. 371; *Bestview Holdings Limited*, [1983] OLRB Rep. Aug. 1250; *The Board of Education for the City of Toronto*, [1986] OLRB Rep. June 900; *Kidd Creek Mines Limited*, [1984] OLRB Rep. Mar. 481; *TV Guide Inc.*, [1986] OLRB Rep. Oct. 1451; and, more recently, *Pepsi Cola*, [1995] OLRB Rep. Aug. 1311. Fragmented bargaining structures can pose serious labour-relations problems. Conversely, broader based bargaining units make collective bargaining go more smoothly and successfully.

34. There is nothing particularly novel about these observations. Nor are they unique to Ontario, or to the Ontario Labour Relations Board. The consolidation of bargaining structures has been ongoing in other jurisdictions for many years (the Post Office, CBC, railways, and airlines come to mind); and policy considerations such as those discussed in the Ontario cases can be found in the reasons of other adjudicators in other jurisdictions. Those boards, too, have been inclined to favour more comprehensive bargaining units unless there are persuasive countervailing considerations. See, for example: *ICBC*, *supra*; *Canadian Pacific Limited* (1976), 1 CLRBR 361; *Saskatchewan Wheat Pool* (1977), 1 CLRBR 510; *Atomic Energy of Canada Ltd.* (1978), 1 CLRBR 92; *British Columbia Telephone Limited* (1977), 2 CLRBR 385; *CBRT and Sea Span International Ltd.* (1979), 2 CLRBR 213; and compare the "rethinking" evidenced in Ontario cases such as *Mississauga Hydro-Electric Commission*, *supra*, and *Caressant Care Nursing Home of Canada Limited*, [1996] OLRB Rep. Sept./Oct. 748.

35. The fact is: bargaining units are being consolidated on a regular basis - either because the legislation requires it, or because the legislation permits it.

(e.g. section 7 of Bill 40), or because of employer restructuring, or contingent upon the merger of trade unions themselves. And generally speaking, neutral commentators think that such consolidation is a good thing. Bigger may not always be better, but broader, more comprehensive bargaining units are usually preferable - and more appropriate - than narrow fragmented ones. On the other hand, there may well be a variety of broadly-based groupings (but less than "all employees") which were and continue to be appropriate despite an operational merger of the predecessor organizations. In the hospital sector, for example, comprehensive units of paramedicals, service workers, etc. have been and may still be appropriate despite the bigger size of the successor organization.

36. In summary, the direction of the law, the direction of policy, the metamorphosis of employer and union organizations, and the evolution of thinking on these issues have, for the most part, all pointed towards broader bargaining units and extended area bargaining.

18. OPSEU also relies on the fact that there is no division between clerical and professionals in service delivery terms. The CCAC provides a total integrated package of services and the clerical and professional employees work together to do that in such a way that the client cannot tell the difference.

19. The employer, ONA and CUPE rely on the fact that four of the five predecessor CCACs and approximately sixty-five per cent of employees operated under a two bargaining unit structure. The employer also argues that the Board should give its preference as to bargaining unit structure significant deference since it is in the best position to know what its operational needs are. The employer relies heavily on the Board's statements in *The Corporation of the City of Hamilton* [2002] OLRB Rep. May/June 333 (June 6, 2002):

68. In applications under the Act, the burden of showing labour relations problems rests on those who wish to challenge the employer's proposed bargaining unit configuration. The ATU Locals have been unable to point to any significant labour relations problems which might result from the Board adopting the City's proposal. I do not see any significant labour relations problems in having the transit and fleet employees combined with the City's other employees in the large inside-outside bargaining unit.

20. It also relies on *Ottawa Transition Board* [2001] OLRB Rep. January/ February 92 (January 11, 2001) where the Board said:

25. The City takes the position that its operational needs will be best served by having a single professional bargaining unit, as it has agreed with the CIPP and CUPE Local 503. Although the City is not the sole judge of what is most in its operational interest, its view of the matter is an important consideration.

Decision

21. Under s.22(7) of the Act the Board is to have regard to the purposes of the Act in making a determination with respect to the number and description of bargaining units. Those purposes are as follows:

1 The following are the purposes of this Act:

1. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.
2. To facilitate the establishment of effective and rationalized bargaining unit structures in restructured broader public sector organizations.
3. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring in the broader public sector and in other specified circumstances.
4. To foster the prompt resolution of workplace disputes arising from restructuring.

22. Although all parties properly framed their arguments with regard to the purposes of the Act it is absolutely clear to me that either bargaining unit configuration is consistent with the purposes of the Act. First either configuration encourages (or at least does not discourage) best practices that ensure the delivery of quality and effective services that are affordable. It is possible that a single bargaining unit is a less expensive configuration because it means one round of bargaining and one collective agreement to administer. However, it is important not to exaggerate these differences. It is open to the parties to negotiate agreements that mirror each other in many respects. The fact is that whether there is one collective agreement or two, provisions will be negotiated to address the needs of each group of employees. Importantly the Act does not compel that the Board adopt the least expensive bargaining unit configuration and as noted each encourages affordability.

23. There is also really little dispute in this case that both bargaining unit configurations are effective and rationalized and entirely appropriate for collective bargaining, and, could be ordered by the Board on an application for certification. The fact that the number of bargaining units will be greatly reduced satisfies these purposes. Both also facilitate collective bargaining and both foster the prompt resolution of workplace disputes. Two broad bargaining units do not amount to undue fragmentation.

24. What the arguments in this case are really about is which bargaining unit configuration is better having regard to the purposes of the Act and labour relations considerations more generally. In this regard this case is very much like the facts before the Board in *The City of Toronto* [1998] OLRB Rep. September/October 772 at para. 39 where the Board said: "At this point it suffices to say that, in my view, there are quite plausible alternative ways to draw the bargaining unit boundaries, without in any way compromising the overall objectives of Bill 136; so that, in a case like this one, it is difficult to make a principled choice". In other words there is no wrong answer and the task is to find the more right configuration.

25. As the parties argued, there are some limited drawbacks to each of the configurations. Two bargaining units could lead to jurisdictional disputes, although that has not been the experience of the predecessor CCACs who operated in the structure. Two bargaining units could also limit the mobility of employees, although, again, the number of occasions when that would

likely occur (and assuming no provision negotiated in the collective agreement) has and will been extremely small.

26. A single all employee bargaining unit may also permit flexibility. The employer is arguably more able to shift job duties from position to position. Flexibility is important in the current and future health care environment. Of course, the party which should be most interested in flexibility-the employer-is not concerned by whatever flexibility limits may be caused by two bargaining units in this case.

27. These issues, or the potential for them, have driven the Board's stated preference for bigger, broader bargaining units. However, it is important to note that this preference has rarely led to the Board ordering a single large all employee bargaining unit. Instead the Board (and often the parties coming before it) has recognized that the benefits of larger bargaining units are largely achieved by large bargaining units whether there is one all employee unit or a division in units based on community of interest or other considerations.

28. I also agree that a single all employee bargaining unit has the potential for minor problems. First, there is a possibility that the interests of the office and clerical employees would be subsumed or obscured by the more numerous professional employee complement particularly since the bargaining unit covers a much wider geographic area than its predecessor. While community of interest has become of limited utility in determining whether a particular bargaining unit is appropriate for collective bargaining, it may still be of some value in choosing which one of two bargaining unit structures is better where, as here, that may be required. However, I do note that there is no evidence here that in Hamilton the interests of clerical employees have actually been limited as a result of being in the same bargaining unit as the professionals. Second, the inclusion of the two groups might complicate bargaining.

29. Third, and perhaps most importantly is the Board's preference to maintain the status quo where there are existing collective bargaining relationships. One sees this tendency in displacement certification cases where the Board has an overwhelming preference for a new bargaining unit which mirrors the existing one, largely on the theory that bargaining unit configurations which have been found to work ought not to be disturbed. One also sees this in the Board's jurisprudence under the Act. In this case four of five CCACs (with more than a majority of employees) operated under a two bargaining unit system and for them a single bargaining unit is a reasonably significant labour relations change.

30. I have carefully considered all of the arguments with respect to the advantages and disadvantages of each configuration. I am satisfied that none of the problems associated with each configuration are serious. In my view, either configuration is equally and entirely appropriate.

31. In these circumstances the employer argues that its choice of structures should be given deference or that its choice should be the rebuttable presumption. It says that it is in the best position to assess its own needs.

32. There is no doubt that the Board must, in fashioning an appropriate bargaining unit structure, have significant regard to the employer's operational needs. That is dictated by the Act. It also makes sense having regard to the purposes of the Act which place a higher value on

operational efficiency and service delivery than the rights of trade unions. However, deference to the employer's choice must be based on concrete benefits not just on the employer's claims. Only if the employer can clearly articulate why one bargaining unit structure is better operationally than another will the Board grant the employer its choice for that reason alone.

33. In this case the employer has not sufficiently articulated the operational benefits to it of two bargaining units in a way that convinces me that the choice will make a real difference for it. Moreover, the employer is a new entity. Five CCACs are being merged into one. I am satisfied that it would be very difficult for the employer to know now with any certainty which is better. I am not at all satisfied that in a situation where both bargaining unit structures are clearly appropriate and only months have elapsed since the changeover, it is in a much better position than the unions to know which is best.

34. In order to choose between the two proposals I draw inspiration from the broader purposes of the Act. There is no doubt that the purposes set out in s. 1 of the Act are satisfied by either configuration. However, in my view, the Act is also concerned with easing the transition of the restructuring. In *City of Toronto* [1998] OLRB Rep. Sept./Oct. 772 at p. 774 the Board said:

12. Under Bill 136, the Board has a wider range of criteria to consider than would be the case under *The Labour Relations Act*, because the Board is being asked to facilitate not only the process of collective bargaining following restructuring, but also the objectives of restructuring itself. To put the matter another way: when redefining bargaining units under Bill 136, the Board is obliged to take into account the operational needs of the new employer and the *transitional challenges occasioned by restructuring*, as well as the "pure" collective bargaining considerations with which it is more familiar under the *Labour Relations Act*. (emphasis added)

35. In my view, the Board's comments in *North Simcoe Hospital Alliance*, [1999] OLRB Rep. May/June 460, particularly in paragraph 28 of that decision, are applicable here:

23. The applicant and OPSEU go further and assert that there should only be one comprehensive unit of non-professional employees. (The nurses and the paramedical employees are each within their own bargaining unit.) In my view, the Act does not compel that result, particularly having regard to the purposes of the Act to which the Board must have regard by reason of section 22(7). Items 2, 3 and 4 of the enumerated purposes of the Act, I believe, are a balance for the direction given to the Board in section 22(1). The criteria for determining the appropriate bargaining unit is not just the employer's operations; rather the Act directs the Board to assess what bargaining unit configuration will "facilitate the establishment of effective and rationalized bargaining unit structures...", will "...facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring..." and will "...foster the prompt resolution of workplace disputes arising from restructuring." (See section 1 of the Act, items 2, 3 and 4.) In my opinion, item 1 of section 1 is directed more towards determining the successor employer's organization and structure and has only a minimal impact on the Board's determination of the appropriate bargaining unit under section 22(1).

24. Effective and rationalized bargaining units, in my opinion, require that employees in those units be effectively represented without impeding the employer's operations. The service employees and the office and clerical employees at both HDH and PGH have been in separate bargaining units which, *prima facie*, suggests some degree of separate interests being represented in collective bargaining. Although there may be some overlap of skills and job duties, that historical structure, in the absence of evidence of difficulties caused by that existing structure, indicates that the distinction between office and clerical employees and service employees has been effective for the employees and has not detrimentally impacted on the applicant or its predecessors.

25. There have not been any examples of difficulties arising during the collective bargaining with the applicant and its predecessors. Collective bargaining among the parties has worked up to now. There has been ongoing consolidation of services and programs at HDH and PGH and the current bargaining structure has not adversely affected that process. In my opinion, changing the bargaining structure by putting office and clerical employees into one bargaining unit with service employees may well make bargaining more difficult rather than facilitate bargaining, particularly where two groups of employees who have been in separate units are compelled to bargain together. Also, given the disparity between the number of office and clerical employees and the number of service employees, the interests of the office and clerical employees may be submerged by the interests of the larger group of service employees if they were in one unit.

26. The objective of fostering prompt resolution of workplace disputes contains the assumption that the Board should try to avoid creating workplace disputes through its bargaining unit determinations under section 22 of the Act. The comments of the Board in *Grey Bruce Health Services*, *supra*, at paragraph 12: "...given the upheaval and uncertainty present currently in the hospital sector, it is not necessary in this case to potentially further complicate matters by putting employees together who have not previously bargained together," and in *City of Toronto*, *supra*, at page 775: "...Bill 136 does not necessarily demand massive changes on the collective bargaining front. The results can be much more incremental and respectful of established bargaining structures-provided they are workable or the parties agree to them. What Bill 136 does do, is require the Board to take into account both the imperatives and impact of restructuring, so that the Board can make the collective bargaining framework congruent with that process," are particularly apt in this context. Those comments suggest the Board should exercise some caution when asked to eliminate existing bargaining units by combining them after the Board has made a declaration under section 9 of the Act and should do so only when the established bargaining structures are not "workable" in the successor employer's operations.

27. There is not, in my opinion, a default of "bigger is better" where the parties cannot agree on the bargaining unit configuration under the Act. Nor is the burden on the parties who want smaller bargaining units to demonstrate that the larger bargaining unit is not appropriate. Rather, the Board's approach in these sorts of cases appears to favour the bargaining unit structure that would result in relatively minimal disruption to the existing labour relations framework provided it is appropriate for the successor

employer's operations (bearing in mind that many different bargaining unit structures may be appropriate and that the Board does not have to determine what structure is the most appropriate) and the purposes of the Act are met by that structure.

28. In my view, the larger unit sought by the applicant and OPSEU is not the only bargaining unit appropriate for the applicant's operations. Clearly, the bargaining unit they propose is appropriate for the applicant's operations and is consistent with the purposes of the Act. Nevertheless, I am satisfied that the bargaining unit structure proposed by Local 204 and CUPE is also appropriate for the applicant's operations and is also consistent with the purposes of the Act. Where there may be more than one bargaining unit configuration appropriate for a successor employer's operations that are also consistent with the purposes of the Act, I am of the view that the Board should opt for the configuration that causes the least disruption to the existing pattern of collective bargaining.

36. I agree that the Board should, where appropriate, cause minimal disruption in determining the appropriate bargaining unit structure. I agree that where there is more than one bargaining unit configuration, each of which is essentially equally consistent with the purposes of the Act, the Board should opt for the configuration which deviates least from the pattern of collective bargaining which existed at the predecessors. Such a course is the safest. It is also to the advantage of the employer and employees. The restructuring of CCACs are not a neutral event for employees. The new employer has already indicated that it plans to consolidate tasks in regional centres. That will have an impact on employees which must cause them consternation. Moreover, it is absolutely certain that some employees will be required to be represented by a new bargaining agent after being satisfied with the representation by a different bargaining agent for many years.

37. In this application the Board has the opportunity to make the process a little easier for a majority of employees and in so doing possibly decrease the distractions at work and reduce the questions which must be answered by the employer (and the unions). It is appropriate to do so since there is no other principled reason to choose one configuration over the other. While there is no consistent pattern, more than fifty per cent of employees (indeed approximately sixty-five per cent) were employed under a two bargaining unit regime. That is a significant factor which directs my decision-making.

38. For all of the foregoing reasons I ordered that there be two bargaining units at the Hamilton Niagara Haldimand Brant Community Care Access Centre.

0833-06-ES Ilaris Corporation, Applicant v. Artem Gadzevych, Mikhail Katayev, Victor Chorikov, Tatiana Chlygina and Director of Employment Standards, Responding Parties

Employee – Employment Standards – The employer sought review of an employment standards officer's order to pay wages to two employees – The employer argued that the individuals were independent contractors and not employees, and therefore not subject to the Act – The Board held that the employer, a construction contracting business, engaged individuals to perform work on a project by project basis: the company's

director found the work, estimated the cost of the job, estimated the price, then hired the individuals to work on the projects; payments were made every two weeks or at the end of the job; individuals were not free to assign work to others – The Board found that an employment relationship existed between the parties, and that poor performance was no reason to deny the employees their wages – Application dismissed

BEFORE: *Ian Anderson*, Vice-Chair.

APPEARANCES: *Jose Alvarez de Lugo* and *Alex Buskin* appeared on behalf of the applicant; no one appeared on behalf of the responding employees; no one appeared on behalf of the Director of Employment Standards.

DECISION OF THE BOARD; May 25, 2007

1. This is an employer application for review under section 116 of the *Employment Standards Act*, 2000, (the “Act”) of an Order to Pay wages to Victor Chorikov and Tatiana Chlygina made against “Alex Buskin o/a Ilaris”. (Portions of the Order to Pay relating to other individuals have been settled as referenced in earlier decisions of the Board.) Alex Buskin attended the hearing, but Mr. Chorikov¹, Ms. Chlygina and the Director of Employment Standards did not. Accordingly, Mr. Buskin’s evidence was uncontradicted.

2. Mr. Buskin states that the correct name of the employer is “Ilaris Corporation”. The style of cause is amended accordingly.

3. Mr. Buskin’s position is that Mr. Chorikov and Ms. Chlygina were independent contractors, not employees within the meaning of the Act, and as such not subject to the Act. The Board has recently had occasion to consider the distinction between an employee and an independent contractor. In *2006515 Ontario Inc. (c.o.b. Greco Health Shack)*, [2005] O.E.S.A.D. No. 34, the Board made the following observations, which I adopt:

34. The Act is deemed to be remedial, as are all statutes [sic: statutes], and is to receive “such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent and spirit”: section 10 *Interpretation Act* R.S.O. 1990, c. I. 11.

35. In *Machtinger v. HOJ Industries Ltd.* [1992] 1 S.C.R. 986, the Supreme Court of Canada considered the purpose of the predecessor Employment Standards Act, and stated (at page 1003):

The harm which the Act seeks to remedy is that individual employees, and in particular non-unionized employees, are often in an unequal bargaining position in relation to their employers.

....

¹ After the hearing, the Board received a letter from Mr. Chorikov in which he stated he did not receive the notice of the hearing and requested that the matter be set down for a new hearing. In view of my conclusion that the Order to Pay in his favour is to be affirmed, there is no need to consider his request further.

... Accordingly, an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not.

The current Act has the same purpose and is to be interpreted in a similar manner.

36. "Employee" is a defined term under section 1 of the Act. The definition is inclusive and includes "a person who performs any work for or supplies any services to any employer for wages". What ever else this may mean, an individual who is an "employee" within the meaning of the Act, and hence entitled to protections of the Act, at the very least includes those individuals who would be considered employees at common law.

37. The test to be applied in determining whether an individual is an employee or an independent contractor at common law was recently reviewed by the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.* [2001] 2 S.C.R. 983. The Court reviewed the various tests which have been articulated at common law over time: the "control test"; the "fourfold test"; and the "organization test" or "integration test". The Court noted the difficulties which have emerged from the application of each of these tests. Of note, with respect to the "organization test", the Court referred favourably to the following statement by MacGuigan J.A. in *Wiebe Door Services Ltd. v. M.N.R.*, [1986] 3 F.C. 553:

Of course, the organization test of Lord Denning and others produces entirely acceptable results when properly applied, that is, when the question of organization or integration is approached from the persona of the "employee" and not from that of the "employer," because it is always too easy from the superior perspective of the larger enterprise to assume that every contributing cause is so arranged purely for the convenience of the larger entity. We must keep in mind that it was with respect to the business of the employee that Lord Wright [in *Montreal v. Montreal Locomotive Works Ltd.* [1947] 1 D.L.R. 161] addressed the question "Whose business is it?" [Emphasis added [by the Supreme Court of Canada].]

38. The Court concluded (at paragraph 46) that: "there is no conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor". The Court continued, however, as follows:

¶ 47 Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J. in *Market Investigations, supra* [*Market Investigations Ltd. v. Minister of Social Security* [1968] 3 All E.R. 732]. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her

own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.

¶ 48 It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.

39. Finally, it is important to note that whether or not an individual is an employee or an independent contractor is a question of law to be determined after consideration of all of the relevant factors. The intention of the parties is relevant only to the extent that it is reflected in the actual arrangements they have made with each other in structuring their relationship. Put another way, the parties cannot by their "agreement" render the relationship of an employee an independent contractor or *vice versa*: see for example *Greypoint Properties Inc.* [2000] OLRB Rep. May/June 479 at paragraph 15.

4. Ilaris is a construction contracting business, providing repair and renovation services to customers. Mr. Buskin states that Ilaris has 10 electricians, 9 plumbers, 12 painters and a professional engineer. Some of the individuals work for Ilaris on a regular basis, some only work for Ilaris after the hours of permanent jobs they have in which they are employed by someone else and some do so on a casual basis. These individuals generally provide their own hand tools. Ilaris owns and provides more expensive equipment, if necessary for the project, including a jackhammer and three scissor lifts. Mr. Buskin considers all of the individuals who work on the projects to be subcontractors. At the times material to this application, he states Ilaris had a minimum of 45 subcontractors working for it. He states that Ilaris in fact has only three employees: himself and two other "directors".

5. Ilaris engages individuals to perform work on a project by project basis. Mr. Buskin finds the work, estimates the cost of the job, negotiates the price, which is based in part on specified materials and supplies the materials to the job site. He hires individuals to work on the projects for which they are paid agreed upon amounts. Payments are made every 2 weeks or at the end of the job. The individuals are not free to assign the work to others. People are usually assigned to jobs two weeks in advance.

6. Some of the work is broken down into what Mr. Buskin calls "cells", with a "cell leader". Typically a cell leader will be a skilled trade. If the cell leader has his or her own helpers, then the cell leader is responsible for paying the helpers out of the amount they receive from Ilaris. If the cell leader requires helpers, Ilaris will supply and pay them, paying the cell leader less.

7. Victor Chorikov had worked on several contracts for Ilaris during the period July to November 2005. With the exception of a one month absence, it appears that he worked essentially continuously for Ilaris during this period of time. The order to pay with respect to Mr. Chorikov relates to the last contract he had with Ilaris. Mr. Buskin had hired another individual to install a hardwood floor in a condominium unit. He hired Mr. Chorikov to assist that individual. Mr. Chorikov was hired to provide "labour" on the project, for which he was to be paid \$675. The job was to be completed within 9 days. The job involved a number of tasks. Mr.

Buskin assigned Mr. Chorikov the task of applying glue to the sub-floor on which the hardwood flooring was to be laid. Mr. Chorikov did a careless job with the result that the glue had to be removed. Mr. Buskin asked Mr. Chorikov to return and remove the glue. Mr. Chorikov did not return and Mr. Buskin refused to pay Mr. Chorikov the \$675 for the job that he had performed.

8. In my view, it is clear that Mr. Chorikov was not an independent contractor but rather an employee who was being paid on a piece rate basis. His labour was an integral part of Ilaris' business. Ilaris, in the person of Mr. Buskin, and not Mr. Chorikov, found the work, bid on the work, and contracted to perform the work. Ilaris provided the materials. While Mr. Chorikov was hired for a fixed amount per project, and not on an hourly rate, he was not free to substitute someone else to perform the work. Indeed, Ilaris, again in the person of Mr. Buskin, assigned Mr. Chorikov to perform specific tasks. Mr. Chorikov did not hire or supervise others. There is no sense in which he can be described as being in business for himself. Rather, his activities were controlled by Ilaris. Accordingly, I find that he is an employee within the meaning of the Act and not an independent contractor. Unsatisfactory performance of work is not a basis for refusing to pay wages. In the result, I also find that he is entitled to \$675 in unpaid wages as ordered by the employment standards officer.

9. The employment standards officer also issued an order to pay in favour of Tatiana Chlygina. Mr. Buskin states that Ms. Chlygina never worked for Ilaris. Rather he states that her husband, Boris Chlygina, worked for Ilaris. Ilaris paid Ms. Chlygina to provide "labour" and she provided Mr. Chlygina. Once again Mr. Buskin considers the relationship to be that of an independent contractor.

10. Apart from the manner of payment, Mr. Chlygina's situation is not materially different from that of Mr. Chorikov. He worked for Ilaris on a number of different projects on what appears to have been a continuous basis for the months of October and November 2005. He was assigned specific tasks by Mr. Buskin and had been assigned by Mr. Buskin to work as part of a "cell" on at least 3 occasions. Like Mr. Chorikov, I conclude that Mr. Chlygina was an employee not an independent contractor. The fact that payments were made to Ms. Chlygina and not to Mr. Chlygina does not change this result. There is nothing before me to suggest that Ms. Chlygina was in the general business of providing labour as temporary help. In any event, even if she was, I would find that once Mr. Chlygina was provided to work for Ilaris he did so under its control and direction and accordingly was its employee. Accordingly, I find that any amount owing was owed to Mr. Chlygina as an employee of Ilaris, not Ms. Chlygina as an independent contractor.

11. The employment standards officer found that a total of \$1156.80 was owing to Ms. Chlygina as unpaid wages. Of this amount, \$676.80 was in relation to a cheque on which a stop payment was placed and the remaining \$420 was for unpaid wages. The basis for the balance is unclear from the officer's narrative report. Mr. Buskin states that he had agreed to pay Ms. Chlygina the \$676.80 for providing labour relating to the installation of the windows. He states the work was done improperly, and accordingly he put a stop payment on the cheque. He denies any knowledge of the basis on which the employment standards officer could have concluded that an additional \$420 was owing.

12. As stated before, unsatisfactory performance of work is not a basis for refusing to pay wages. I find therefore that Mr. Chlygina is entitled to \$676.80 in unpaid wages in relation to the

work covered by the stopped cheque. There is no evidence before me, however, to establish that Mr. Chlygina is entitled to the additional \$420. The employment standards officer's order is therefore amended to delete any entitlement to Ms. Chlygina and to provide that Mr. Chlygina is entitled to \$676.80.

Disposition

13. In the result:

- a. The Order to Pay, to the extent that it orders \$675 payable to Victor Chorikov, is affirmed.
 - b. The Order to Pay, to the extent that it orders \$1156.80 payable to Tatiana Chlygina, is amended to provide that \$676.80 is payable to Boris Chlygina.
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0487-06-OH Kristine Neville, Applicant v. Dr. Cathy Emms, **Ivy Veterinary Services**,
Responding Party

Discharge – Health and Safety – Reprisal – The applicant complained that she had been discharged for raising health and safety concerns associated with some renovations undertaken by the employer – The Board found the employer had addressed the employee's concerns in several ways, including changing the employee's shift – The Board held that the applicant had simply decided to move on to a job she knew was available to her, and wished to take advantage of what had transpired in the workplace to seek a monetary benefit – **Application dismissed**

BEFORE: *Tanja Wacyk*, Vice-Chair.

APPEARANCES: *Kristine Neville* and *Peter Neville* appearing for the applicant; *Joseph N. Tascona* and *Dr. Cathy Emms* for the responding party.

DECISION OF THE BOARD; May 31, 2007

1. This is an application alleging a reprisal under section 50(1) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O-1 as amended (the "OHSA"). The applicant, Kristine Neville, maintains she was subjected to reprisals by her former employer because she raised health and safety concerns at her place of employment. The alleged reprisal was in the form of a schedule change, and the loss of her employment.

2. I find that the applicant was not subjected to unlawful reprisal by the responding employer. My reasons are set out below.

BACKGROUND/EVIDENCE:

3. Ms. Neville was employed as a receptionist with the responding employer, Dr. Cathy Emms. Dr. Emms is the owner of Ivy Veterinary, a veterinary clinic dealing with small animals and exotics, from August 19, 2003 to May 9, 2006.

4. On the weekend of April 1, 2006, the clinic was painted. Ms. Neville maintains that on April 7, 2006, she developed swelling around her eyes and face. Further painting was done on the weekend of April 8, 2006. On April 17, 2006, some minor renovations, involving replacing some drywall, lights and floor tiles was performed by "CLM Martin".

5. On April 20, 2006, Ms. Neville was still experiencing physical difficulties. According to Dr. Emms, she indicated that her eyes felt "funny" and her face felt swollen. Ms. Neville mentioned to Dr. Emms that she believed the clinic may be the source of her difficulties, and that the doctor in the Emergency Clinic also thought this might be the case.

6. Dr. Emms testified that from her perspective, Ms. Neville looked the same as she always did, but she advised her to see a doctor to investigate whether she had a sinus infection. Dr. Emms testified that no other employees had indicated they were experiencing any physical difficulties. She mentioned that Vicky Shaw, another employee, had initially experienced similar symptoms to those of Ms. Neville, but they disappeared once an Easter Lily she had received from her husband was removed.

7. On April 21, 2006, Ms. Neville called CLM Martin, complaining of nausea and headaches, and requested the Material Safety Data Sheets (MSDS) for the glue used in the work they had performed. It appears that Ms. Neville also asked about mold. Dr. Emms testified that having discussed the matter with Ms. Neville, she also requested a copy of the MSDS sheet from CLM Martin.

8. According to Dr. Emms, Ms. Neville also asked her to have the air tested in the two buildings which comprised the clinic. Dr. Emms testified that she responded that she would have to think about it as she was having difficulty believing Ms. Neville's symptoms were related to conditions in the building, as no one else was having a problem, and the clinic was very clean.

9. Ms. Neville testified that Dr. Emms responded to her concerns with hostility, and refused to have the air testing conducted. However, she provided no details in that regard. Dr. Emms, on the other hand, denied that she reacted with hostility, but testified that their discussion was "emotional". Dr. Emms testified that at the time of the conversation she was about to contact an owner to advise that their animal had died, and this was always an emotional time for her. Dr. Emms also denied refusing to have the air testing conducted, and maintained she had responded only that she wanted to think about it.

10. It was also Dr. Emms' uncontested evidence that about that time, Ms. Shaw approached her, indicating Ms. Neville had asked her to speak to Dr. Emms and request a shift change for them. Dr. Emms indicated she felt "exasperated" by the request, as she had recently reorganized the shifts, and in any event, it was not clear what change was being sought. She indicated there had been multiple prior shift changes, starting in November 2005, most of which

were to accommodate Ms. Neville, who was often dissatisfied with the staff with whom she was working.

11. For example, Dr. Emms testified that one employee (whom I have decided not to name) had been working mornings with Ms. Neville, but Dr. Emms felt she had to make a change, as Ms. Neville thought the employee was "stupid" and could not do the job. She testified that Ms. Neville went as far as to throw things at the other employee, who was only 18 years old. Dr. Emms indicated that she did not feel this was conducive to a positive work environment and consequently, moved the employee to another shift.

Dr. Emms testified that Ms. Shaw also changed shifts to accommodate Ms. Neville. She had been working the afternoon shift, and Dr. Emms moved her to the morning shift to assist Ms. Neville, as the mornings were stressful, and Ms. Shaw was more experienced.

12. In response to Ms. Neville's concerns regarding air quality, Dr. Emms had the furnace filters changed, and arranged for Essential Oil of Lavender to be used twice weekly in the furnace/air conditioning ducts to ensure viruses, bacteria, and molds were not growing there. Dr. Emms advised Ms. Neville of these measures on April 24, 2006. She also advised that the Easter Lily plant had been removed.

13. Dr. Emms also testified that she thought some of Ms. Neville's symptoms were stress related. Consequently, in the course of their discussion on April 24, 2006, suggested that Ms. Neville take some time off to get her issues "sorted out". It was Dr. Emms' uncontested evidence that Ms. Neville responded that she had been thinking about that herself. Dr. Emms also advised Ms. Neville that she would not be required to take forfeit any vacation time if she decided to take a leave. Dr. Emms described the exchange as a "constructive discussion" and indicated Ms. Neville thought her suggestion was a good idea.

14. There does not appear to be any issue regarding Ms. Neville being required to take time off, as she did not challenge Dr. Emms' testimony in this regard, and in her application she indicates that by the end of the day she had decided to take a few days off and go to her family doctor. Before she left, she also requested a copy of the MSDS regarding the paints used in the facility.

15. On April 26, 2006, Ms. Neville came into the clinic and picked up the MSDS for the glue used for the floor tile and behind the baseboards, which had been provided to Dr. Emms by CLM Martin in response to Ms. Neville's and Dr. Emms' earlier requests. In their cover letter, dated April 25, 2006, CLM Martin also indicates that when they removed and replaced some of the vinyl covered drywall, there was no visible signs of mold.

16. Dr. Emms also testified that at Ms. Neville's request, she also had installed three carbon monoxide detectors to ensure that the carbon monoxide levels did not exceed safe levels. They were installed in the lab, close to the waiting room, and one in the kennel area. Dr. Emms testified that Ms. Neville indicated that she did not think that was adequate, but neither she nor Ms. Neville articulated the nature of her concern.

17. On April 27, 2006, Dr. Emms called and left a message for Ms. Neville, indicating that the MSDS sheet on the paint was available for her to pick up, and that a letter had been left at the front desk outlining the schedule changes for her. Ms. Neville picked both up the next day,

April 28, 2006. According to Dr. Emms, Ms. Neville indicated she was reluctant to come into the building because she felt it would make her ill to do so. This was not contested by Ms. Neville.

18. The letter regarding Ms. Neville's shift change was dated April 27, 2006 and stated:

Kristine:

Just a short note to let you know about scheduling changes:

When you return, I would like you to start the afternoon shift, as I feel the morning shift has likely caused you a lot of stress, and a change will be beneficial. Kayla and Vickie will do the morning and will stay on afternoons. (like Tuesday and Wednesday), as needed to cover times when students and Niki are unable to attend. Likely, you will do every second or third Saturday; possibly every third when Kayla is more confident about the front desk.

Please let me know your expected date of return: I hope you are feeling better.

Sincerely, Cathy

19. Upon reading the letter, Ms. Neville advised Dr. Emms that she considered the change a "punishment" for raising her health and safety concerns. Dr. Emms denied this was the case. Rather, she indicated that she believed Ms. Neville was under a lot of stress, and that this arrangement may be preferable to her.

20. Prior to her leave, Ms. Neville's shift was from 7:30 a.m. to 2:00 p.m. Her new shift was from 1:00 p.m. to 7:00 p.m. Although half an hour shorter than her previous shift, Dr. Emms testified that in most instances, the person working that shift was rarely done at 7:00 p.m. and often left half an hour later. Ms. Neville responded that this was the case with all the shifts and consequently maintained that she had lost half an hour.

21. In her conversation with Dr. Emms on April 28, 2006, Ms. Neville also indicated that she expected to be paid for those days she was on leave. Dr. Emms responded there was no policy to pay for sick days. In cross-examination, Dr. Emms conceded that she had paid Ms. Shaw's salary for two days when she was off with a cold. She pointed out, however, that Ms. Shaw was off work for more than two days, and indicated that she paid for the two days for compassionate reasons. She also testified that had there been evidence of contamination in the clinic she would have felt morally obligated to pay for Ms. Neville's time off, but there was none. Dr. Emms further testified that Ms. Neville never provided any medical information regarding her situation.

22. Although it was not clear when this occurred, Dr. Emms also provided Ms. Neville with another letter, also dated April 27, 2006, setting out the changes she had made to ensure the office does not contain environmental irritants. In addition to changing the furnace filters, adding Essential Oil of Lavender, and installing the carbon monoxide detectors, referred to above, the letter also refers to: the furnace fan being on at all times; speaking to a representative from CLM Martin regarding whether mold or dampness was observed by their crew while performing the work; arranging for the removal of "ants with wings" which had been seen in the clinic;

obtaining the MSDS regarding the paint thinner, paint and glue used; cleaning the computer keyboards and the phone receivers and keypads at the end of each work day with disposable Lysol anti-bacterial wipes; as well as cleaning the desks in the lab, exam rooms and the front desk with Lysol individual wipes.

23. Dr. Emms further testified that having considered Ms. Neville's request regarding air quality testing, she decided to have the tests performed, and this occurred on May 4, 2006. She advised Ms. Neville on May 5, 2006 that this was the case. She also advised Ms. Neville that it would be at least 7 to 10 days before the report with the results was received.

24. Also on May 5, 2006, the clinic was inspected by an Occupational Health and Safety Inspector, in response to an anonymous complaint regarding workers having headaches and feeling sick from suspected mold behind recently disturbed drywall or from glue in floor tiles. His report indicates that he spoke to four workers and none were experiencing any symptoms.

25. The Inspector also noted in his report that there were no visible signs of mold, and that workers advised him that air quality testing had been performed and they understood the tests indicated there were no issues. The Inspector indicated he would like copies of the report regarding the testing when it was received. The Inspector also issued an Order that a designated Health and Safety Representative be selected by the workers.

26. Ms. Shaw also called Ms. Neville on the morning of May 5, 2006, and left a message inviting Ms. Neville to a meeting scheduled for 12:30 p.m. to discuss the schedule. Ms. Neville did not attend the meeting because she received the message too late, but subsequently called back and spoke to Ms. Riddell. She asked what her schedule was from now on and Ms. Riddell advised her she would work the afternoon shift, to which Ms. Neville responded that she would see Ms. Riddell on Monday.

27. In cross-examination, Dr. Emms conceded that Ms. Neville had previously been advised of her shift change, by the letter dated April 27, 2006, referred to above. Dr. Emms indicated that as Ms. Neville had taken her leave as of April 24, 2006, she had to implement an interim plan to ensure Ms. Neville's shifts were covered.

28. Dr. Emms also suggested there had been a meeting prior to the April 27, 2006 letter advising Ms. Neville about her shift change, and that she believed Ms. Neville would have been given notice of that meeting. However, no details were given regarding when the meeting occurred (other than Dr. Emms' testimony that it was probably April 25 or 26, 2006), who attended, what was discussed etc. Also, Dr. Emms testified that she did not personally advise Ms. Neville about the meeting, and it "would have been done" by either Ms. Riddell or Ms. Shaw. Ms. Neville denied receiving any notice of such meeting.

29. After their May 5, 2006 conversation, in which Ms. Neville indicated she would be in on the following Monday, Ms. Riddell advised Dr. Emms of the conversation. Dr. Emms asked Ms. Riddell to call Ms. Neville back and advise her that the test results from the air testing would not be available until the following Thursday at the earliest, and that if she wanted to wait until then before returning that was "O.K." Dr. Emms testified that she also asked Ms. Riddell to ask Ms. Neville to call and let them know her decision. According to Dr. Emms, Ms. Riddell did as asked, but Ms. Neville did not call back to indicate what she had decided.

30. Consequently, Dr. Emms followed up by telephone on Sunday, May 7, 2006, to ensure Ms. Neville understood what was happening. There was no answer, and Dr. Emms left a message for Ms. Neville, letting her know that it takes 7 to 10 days for the mold culture results and that was the only way to be sure the environment was safe for her. She recommended that Ms. Neville not return to work the following day, but rather wait until the test results were received, and that the earliest possible date would be the next Thursday, May 11, 2006.

31. In cross-examination, Dr. Emms indicated she had taken this step because on April 28, 2006, Ms. Neville had indicated she did not want to come into the building because of concerns regarding her health.

32. Ms. Neville did not attend at work on Monday. Instead, she came to the clinic on Tuesday, May 9, 2006, and left a letter of resignation with Ms. Shaw, to give to Dr. Emms. Ms. Shaw asked her if she wished to speak to Dr. Emms but Ms. Neville declined. The letter stated:

May 9, 2006

Dr. Cathy Emms:

Please accept this as my letter of Resignation from Ivy Veterinary Services. After bringing to your attention the possibility of a health problem in the clinic I was met with hostility, persuaded to take time off and my hours and schedule were changed entirely. You indicated to me directly on the 28th of April that you had no plan to have anyone come in to check the air quality and that you would not compensate me for my lost wages. You then informed me on the 5th of May that someone had been in to check air quality on the 4th of May and results were negative for mold and moisture. I had let you know on the 28th that I would be back the day after inspection took place although I did not receive a phone call to return to work. When I called to find out when to return I was told to come Monday May 8th at 1:30 pm. I then received a message from you on Sunday morning the 7th of May suggesting that I don't return because of other tests that were performed for which you are awaiting results.

It was never my intention to resign and I only do so now, under duress, as it will now be 3 weeks lost wages and I am forced to seek other employment. I consider this to be a constructive dismissal as I have been left with no other choice.

Sincerely,
Kristine Neville

33. Dr. Emms testified she was surprised that Ms. Neville had decided to resign prior to receiving the results of the air quality testing, which were due in two days.

34. On May 16, 2006, Dr. Emms called the company which had performed the air quality testing. She testified that had Ms. Neville not quit, she would have called them on May 11, 2006, as this is when the results were due. In any event, she was advised that the results were negative, as any levels of mold were well within the limits. The results of the air testing were confirmed in

a written report dated May 23, 2006. That report stated that all samples collected indicated that the level of colony-forming units per cubic meter of air were below Health Canada Guidelines.

35. Ms. Neville testified that it was never her intention to quit her employment, but that she was met with a terrible situation once she raised her health and safety concerns, and was "met with hostility every step of the way". She also testified that she had already lost two weeks of wages by the time she received Dr. Emms' message of May 7, 2006, suggesting she not return for what she characterized as "at least one more week".

36. Ms. Neville maintained that her shift change represented a reduction in hours, and that this constituted a reprisal for having raised her health and safety concerns. She also maintained she quit her employment because of the wages she had lost, and because she needed immediate employment. Ms. Neville argued that if Dr. Emms was so certain there was no health and safety problem at the clinic, she should have been allowed to return work.

37. In cross-examination, Ms. Neville conceded that she never provided Dr. Emms with any medical documentation regarding the difficulties she was experiencing.

38. When asked why she did not give her the resignation letter personally, Ms. Neville testified that she did not do so because she was very upset that she had to resign. When asked why she did not sit down with Dr. Emms, and discuss the situation with her before quitting, Ms. Neville testified that Dr. Emms was too hostile when they met – but again, no details were given.

39. When asked why she did not wait the two days for the results to be received, Ms. Neville responded that she did not know. She initially denied that it was because she had found another job. However, she conceded that when she did quit, she was aware that she could work at Pine Hills Veterinary Clinic, as they had indicated there was always a job for her if she wanted it.

40. At the beginning of the hearing Ms. Neville indicated that she started her employment with Pine Hills Veterinary Clinic on May 16, 2006, and consequently was looking only for monetary damages. However, by the second day of the hearing, she had lost her employment there, and requested reinstatement with the responding party.

ANALYSIS:

Applicable Statutory Provision

41. Section 50(1) of OHSA states:

- 50. (1) No employer or person acting on behalf of an employer shall,
 - (a) dismiss or threaten to dismiss a worker;
 - (b) discipline or suspend or threaten to discipline or suspend a worker;

- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act.

42. Section 50(1) of OHS Act prohibits taking any negative action against employees because of their seeking enforcement of their rights under the Act.

43. Let me begin by indicating there were problems with the evidence of both parties. I found the testimony of both Dr. Emms and Ms. Neville to be lacking in the sort of details that would have assisted me in getting a clearer appreciation of what actually transpired between them. While Ms. Neville testified she was met with hostility and yelling, she did not provide enough detail for me to make a determination that this actually occurred.

44. While Dr. Emms denied yelling and being hostile, she gave few details regarding the tenor of the discussions, other than indicating that the exchange regarding Ms. Neville's request that the air be tested, was "emotional". This leads me to conclude that at the very least, Dr. Emms responded with some frustration and resistance to Ms. Neville's suggestion that her symptoms were related to the work that had been done in the building.

45. However, Ms. Neville's symptoms were somewhat vague, and in the absence of any medical evidence regarding Ms. Neville's situation, and any similar difficulties being experienced by other staff, it is perhaps understandable that she did not immediately embrace Ms. Neville's conclusion regarding the cause of her symptoms.

46. It is also apparent that Dr. Emms made significant efforts to respond to Ms. Neville's concerns, including: obtaining and providing the MSDS sheets Ms. Neville requested; changing the furnace filters; removing the Easter Lily plant; adding Essential Oil of Lavender twice weekly in the furnace/air conditioning ducts; installing three carbon monoxide detectors; having the equipment cleaned regularly, and arranging for air testing.

47. What seemed to offend Ms. Neville was Dr. Emms' perceived reluctance to arrange for the air testing. Once again, this may have been understandable in light of the absence of any substantial reason to believe that Ms. Neville's difficulties were related to her work environment, or any medical documentation to support that request. However, having considered the request, Dr. Emms did arrange for the testing. She also advised Ms. Neville that she had done so, and kept her informed regarding when the testing had taken place, and when the final report could be expected.

48. It perhaps bears repeating that it is not disputed that it was Ms. Neville's decision to take some time off. Nor is it alleged that Dr. Emms' refusal to pay Ms. Neville's wages while she was on leave constituted a reprisal. Rather, Ms. Neville submits that the change to her shift, resulting in a shorter scheduled shift, constitutes the reprisal.

49. Dr. Emms denied changing Ms. Neville's shift as a reprisal. Rather, she testified that she initiated the shift change for three reasons: because of Ms. Neville's request, communicated by Ms. Shaw, for a schedule change; because of the scheduling difficulties she encountered as a result of Ms. Neville's absence; and because she thought it might be less stressful for Ms. Neville to work the afternoon shift.

50. Be that as it may, Dr. Emms made the scheduling change in a manner that would almost guarantee a negative reaction on Ms. Neville's part. I make that comment as I am not persuaded there was a meeting on April 25 or 26, 2006 regarding scheduling, to which Ms. Neville was invited. At best, I find that Dr. Emms was confused with regard to whether such a meeting occurred or at least with regard to its timing. Rather, I find that the shift change was first communicated to Ms. Neville through the letter of April 27, 2006.

51. However, the fact that Dr. Emms could have done a better job of communicating with Ms. Neville regarding the shift change, does not, in and of itself, constitute a reprisal. Ms. Neville did not deny that she had asked Ms. Shaw to speak to Dr. Emms regarding the change in her schedule. Nor did she challenge the other two reasons given for Dr. Emms having reconfigured the shifts. The evidence also suggested that shift and schedule changes were not unusual, and if anything, were quite common. Certainly, Ms. Neville did not indicate otherwise.

52. Having asked for a change, without articulating what she wanted, Ms. Neville is not now in a position to complain about the result. Further, it was clear that Ms. Neville was prepared to come in and work her new shift, and made no effort to have it changed. While it is clear that Dr. Emms would have been well advised to speak to Ms. Neville before implementing any changes, I cannot find that her failure to do so constitutes a reprisal.

53. This brings me to Ms. Neville's resignation, which she maintains occurred "under duress" because she had already lost two weeks of wages and was facing losing a third. However, it was her decision to take a leave. That having been said, once again, Dr. Emms' conduct in this regard gives me pause. Her handling of Ms. Neville's intention to return to work on Monday, May 7, 2006 is best described as "clumsy".

54. However, given Dr. Emms' uncontested testimony that the last time she saw Ms. Neville, on April 28, 2006, she had been reluctant to enter the building, it is perhaps understandable that Dr. Emms wanted to ensure that Ms. Neville understood the timelines regarding the availability of the test results. Furthermore, even on Ms. Neville's evidence, Dr. Emms' suggestion that she wait until the test results were in before returning, was just that – a suggestion.

55. If Ms. Neville had contacted Dr. Emms and indicated she wished to return prior to the receipt of the test results, and had been prevented from doing so, then I would have had no difficulty finding that she had been the subject of an unlawful reprisal. However, those are not the facts of this case. Rather, Ms. Neville chose not to speak to Dr. Emms at all when submitting her resignation, thus precluding or perhaps avoiding an opportunity to clarify matters.

56. There was no suggestion that Ms. Neville was at all reluctant to seek what she felt she was entitled to. Consequently, it is difficult to understand why Ms. Neville would quit her

employment on May 9, 2006, two days before the results of the air testing were possibly available, without any attempt to clarify her desire to return.

57. I note that this application is dated May 10, 2006, the day after Ms. Neville quit her employment. In her application she asks for monetary damages rather than reinstatement, and maintained that position until she lost her employment with Pine Hills Veterinary Clinic. This suggests Ms. Neville had simply decided to move on to a job she knew was available to her, and wished to take advantage of what had transpired to seek a monetary benefit.

58. Ms. Neville seemed to not only expect that Dr. Emms would respond immediately to the concerns she raised, but that she would do so without reservation. However, in light of the absence of anything more than Ms. Neville's speculation regarding the cause of her symptoms, Dr. Emms' need to consider what she was prepared to do in the circumstance was understandable. Consequently, while I find that Dr. Emms could have managed the situation better, I do not find that she, in any way, engaged in a reprisal against Ms. Neville as a result of her having raised health and safety concerns regarding the environment at the clinic.

DISPOSITION:

59. The application is dismissed.

3754-05-ES Tony Shearing, Applicant v. **James Way Construction Inc.** and Director of Employment Standards, Responding Parties

Employment Standards – The applicant sought review of a refusal to award him overtime pay from his employer, for work carried out in the U.S. – The employer argued that the work in the U.S was not a continuation of work performed in Ontario, and accordingly was not work covered by s.3 of the Act – The Board found that the applicant's work in Michigan was indeed a continuation of work performed in Ontario, because the applicant transported materials from Ontario to the U.S job site and then assisted in the installation of those materials in the U.S. – Application allowed; overtime pay awarded (This decision came to the editors' attention subsequent to the preparation of the May 2007 *Highlights*)

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Tony Shearing* appeared on behalf of the applicant; no one appeared on behalf of the responding parties.

DECISION OF THE BOARD; April 25, 2007

1. This is an employee application under the *Employment Standards Act, 2000* as amended (the "Act") for review of a refusal to issue an Order to Pay.

2. The Employment Standards Officer ("the Officer") determined that while the applicant (or "Mr. Shearing") worked for the responding party employer ("JWC") in Ontario he was paid overtime, but that when he worked for JWC in the United States he was not paid overtime and was not entitled to any overtime pay because the work in the U.S. was not a continuation of work performed in Ontario. In other words, the Officer found that the Act did not apply to Mr. Shearing by virtue of the application of subsection 3(1) of the Act, which reads:

3. (1) Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,

- (a) the employee's work is to be performed in Ontario; or
- (b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario.

3. In this application, Mr. Shearing takes issue with the Officer's finding that the U.S. work was not a continuation of the work performed in Ontario.

The Evidence

4. No one on behalf of JWC or the Director of Employment Standards attended at the hearing on April 4, 2007, although it appears that both were provided notice of this proceeding. Consequently, the only evidence before me is Mr. Shearing's testimony and certain documents he identified in the course of his testimony.

5. JWC is in the construction business. It has an office in Kitchener. It builds apartment buildings and commercial buildings.

6. Mr. Shearing worked for JWC from at least some point in 2002 until late 2004 or early 2005. During that period, he worked on several Ontario projects with respect to the erection of KFC franchises. He did similar work in the U.S. for JWC, on a number of fast food franchise construction projects for KFC, Taco Bell, A&W, Pizza Hut and so forth. Mr. Shearing referred to himself as a carpenter or labourer.

7. In the course of his testimony, the applicant produced a "To Whom It May Concern" letter dated November 5, 2002 on JWC letterhead from JWC's President, Al Way, indicating that the applicant was an "EFIS installer" travelling to the U.S. for the purpose of working on the exterior refinishing of a KFC outlet in Michigan. The letter was for the purpose of facilitating Mr. Shearing's entry into the United States. Mr. Way indicated that the goods and materials for the KFC project were of Canadian manufacture, and that JWC was responsible for their delivery and installation of a pre-fabricated system. He concluded by indicating that Mr. Shearing would return to Canada within approximately ten days.

8. Mr. Shearing testified that, when he went on assignment to the U.S., he drove a truck, hauling the materials for the project from a Kitchener warehouse across the U.S. border to the site of the project. Sometimes he traveled with another individual on these trips.

9. According to Mr. Shearing, when he worked in Ontario, he was paid by JWC for all overtime in excess of 44 hours. However, in the U.S., he received only his straight time hourly rate of pay, regardless of the amount of overtime he put in.

10. Mr. Shearing prepared a detailed summary of all his U.S. overtime in excess of 44 hours per week from payroll documents provided to him from JWC. The summary covers the last twelve months of his employment, from February 21, 2004 until February 12, 2005. It shows that, in that period, he worked 906.38 hours of overtime at his prevailing hourly rate. His claim is for a total of \$9,743.11, that is the difference between his regular hourly rate applicable during each U.S. trip, and the overtime premium of 1.5 times his regular hourly rate.

Analysis and Conclusions

11. In my view, the applicant's work in the U.S. was a continuation of work performed in Ontario. I come to this conclusion on the basis that Mr. Shearing hauled the materials for JWC from Kitchener, Ontario across the U.S. border to the job site, and assisted in the installation of those materials in the U.S. Part of his work was the transportation of JWC's goods, and part of the work was the installation of those goods. According to the letter authored by Mr. Way, the contract between JWC and the KFC contemplated both delivery and installation. There is no reason not to infer that this was the way JWC did business with all its U.S. based contractors, particularly since Mr. Shearing testified that whenever he went to the U.S. he was hauling Kitchener materials in a truck across the border.

12. I am aware of only one previous decision dealing with the issue of a continuation of work performed in Ontario: *Cheryl Craig Careers Inc.* (April 7, 1986, unreported decision of Referee Betcherman, E.S.C. 2083). That case involved a claim of overtime for a truck driver whose long-distance hauling assignments began in Ontario, took him to the U.S., and then back to Ontario. The Referee concluded that the claimant's out-of-province work was a continuation of his work in Ontario. I come to the same conclusion in this matter.

13. It may be that the Officer did not have the same information that was adduced in evidence before me. In any event, it is necessary to substitute the Officer's determination with an Order to Pay.

14. As I have indicated, Mr. Shearing prepared a summary of his overtime claim from February 21, 2004 until February 12, 2005. The vast majority of the information on that summary was prepared from a JWC document showing Mr. Shearing's pay history. I am satisfied that the summary is accurate. However, Mr. Shearing filed his claim with the Ministry of Labour on April 5, 2005. Since there were repeated contraventions of the overtime pay provisions of the Act, Mr. Shearing is entitled, by virtue of subsection 111(4) of the Act, to recover wages in the twelve months preceding the filing of the claim on April 5, 2005. Based upon the information contained in the summary, I calculate that, in the twelve month period preceding April 5, 2005, Mr. Shearing worked 770.38 hours of overtime, and is entitled to \$8,380.11 in overtime pay.

Disposition

15. I hereby order James Way Construction Inc. forthwith to pay the Director of Employment Standards on behalf of Tony Shearing wages in the amount of \$8,380.11. If James Way Construction Inc. fails to pay the wages herein ordered within 30 days from the date of this decision, it is further ordered to pay forthwith an administrative fee in the amount of \$838.01 to the Director of Employment Standards.

1542-05-R; 2724-06-R International Union of Operating Engineers, Local 793, Applicant v. **K. J. Beamish Construction Co., Ltd.**, Responding Party

Bar – Certification – Construction Industry – The union filed a card-based certification application on the same day that it advised the Board it wished to withdraw an earlier application, where the Board had found, after hearing status dispute evidence, that a representation vote was required due to membership support being between 40 and 55 percent – The employer requested that the Board impose a discretionary bar pursuant to s. 7(9) – The Board found that the stage of the proceeding when the union seeks leave of the Board to withdraw its application is significant – Here the union chose to withdraw its application after realizing that it did not have sufficient support for certification without a vote – The Board considered this a far different circumstance than when a union withdraws early, after seeing the employer's response and realizing it has insufficient support – The Board found, after the parties' prolonged litigation, that was not fair to the employer, having successfully resisted some of the union's positions, to have to start all over again – The employer and employees were entitled to a period of repose – The Board exercised its discretion and imposed a six month bar – Application dismissed

BEFORE: Marilyn Silverman, Vice-Chair.

APPEARANCES: Sean McFarling, Vaino Poysa, Ken Lew and Rick Cull appeared on behalf of the applicant; Chris Fiore, Bob Graham and Rick Gerry appeared on behalf of the responding party.

DECISION OF THE BOARD; June 15, 2007

1. These two files are applications for certification filed under section 128.1 of the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").
2. This decision deals with the responding party's ("Beamish" or "the company" or "the employer") motion for the Board to impose a discretionary bar in Board File No. 2724-06-R.
3. The application in Board File No. 2724-06-R was filed on November 29, 2006. I will refer to this application as "the 2006 application".
4. On August 11, 2005 the applicant filed an application for certification which was given Board File No. 1542-05-R ("the 2005 application"). There were a number of status disputes

in the 2005 application and I heard evidence and argument from approximately 20 witnesses during the period from December 20, 2005 until September 23, 2006.

5. I issued a decision on November 2, 2006, the result of which was that the applicant did not have the requisite support to obtain certification without a vote (over 55%), but was in a position where the Board would order the taking of a representation vote of employees in the bargaining unit (membership support being between 40% and 55%). By letters dated November 29, 2006, and then November 30, 2006, the applicant advised that it wished to withdraw the 2005 application and requested that it be withdrawn without a bar.

6. On the same day as that letter was dated and filed, the applicant filed the 2006 application. The employer says that the 2006 application should be barred for one year, or alternatively for a 6-month period. The parties are agreed that no mandatory bar applies and the employer's request is for a discretionary bar under section 128.1(21)

The Employer's submissions

7. The employer contends that it was subject to the statutory freeze of its operations throughout the 14-month period since the 2005 application was filed. It has been inhibited in its ability to deal freely with its employees. It submits that the request to withdraw the 2005 application is an abuse of the Board's processes because that request to withdraw was only to enable the union to file the 2006 application.

8. The employer says that in addition to being encumbered by the statutory freeze, it has spent substantial time and resources on the litigation in respect of the 2005 application and that, since the union now seeks to withdraw it, the 2005 application must have had no merit.

9. The employer says that the Board's November 2, 2006 determination meant that the union faced a vote in the 2005 application and the prospect of being unsuccessful.

10. The responding party urges the Board to accept the withdrawal of the 2005 application and impose a bar to the 2006 application and any subsequent application for one year or any other period that the Board considers appropriate.

The Union's submissions

11. The union deals first with the status of the 2005 application. It says that the applicant has a unilateral right to withdraw the 2005 application, (*Canterbury Contracting Inc. (c.o.b. Cartwright Plumbing*), [2005] O.L.R.D. No. 2886). It says that the Board has no jurisdiction not to allow the union to withdraw under the card-based certification provisions, as distinct from the vote-based provisions. In the former, at sections 128.1(21) to (23), there is no reference to the Board's consent.

12. The applicant asserts that to impose a discretionary bar to the 2006 application would be inappropriate. The length of the litigation should not be a factor. The applicant says that it was not solely responsible for the length of the litigation which occurred because of numerous status disputes, illness and the usual challenges of scheduling between the parties, counsel and the Board. It says that during the litigation, events and evidence unfolded that changed positions all

around. Expense and time were expended by all parties and the fault of that does not lie with the applicant and should not prejudice it in this position.

13. In respect of the statutory freeze, the applicant says that the responding party never sought consent to change working conditions and so it is speculative to conclude that the responding party was in any way adversely affected or prejudiced by the statutory freeze.

14. The applicant says that each party is constantly weighing the margin of its success based on the evidence and the prevailing strategies. In doing so, the applicant determined that, rather than have a vote in which its likelihood of success after such a long period of time was reduced, it should withdraw and reapply in a time period in which such an application could be viable; that was before a vote was held and when fresh membership support could be collected.

15. The applicant contends that the Act itself contemplates the withdrawal and re-filing of an application for certification under section 128.1, if no action is taken under section 128.1(7), (12) or (13).

16. The applicant argues that a bar should be imposed after an unsuccessful representation vote or after repeated unsuccessful certification applications in a short period of time. This fact situation does not fall within either of these categories, so the applicant urges the Board not to impose a bar to the 2006 application.

17. The applicant asserts that the Act supports this position in that a union can withdraw an application for certification under section 8.1 of the Act, before the holding of a representation vote and have no bar imposed (*Supply Chain Management Inc.*, [2000] OLRB Rep. March/April 397 (March 27, 2000), *Supply Chain Management Inc.*, [2000] OLRB Rep. May/June 560 (June 21, 2000), and *Husmann Canada Inc.*, [2005] O.L.R.D. No. 2443, Board File Nos. 0362-05-R, 0363-05-R (June 16, 2005)).

Decision

18. The relevant statutory provisions to this determination are found in sections 7(9), 7(10), 111(2)(k), 128.1(7), 128.1(12), 128.1(13) and 128.1(21), which provide:

7. (9) Subject to subsection (9.1) if the trade union withdraws the application before a representation vote is taken, the Board may refuse to consider another application for certification by the trade union as the bargaining agent of the employees in the proposed bargaining unit until one year or such shorter period as the Board considers appropriate has elapsed after the application is withdrawn.

(10) If the trade union withdraws the application after the representation vote is taken, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is withdrawn.

...

111. 2 (k) to bar an unsuccessful applicant for any period not exceeding one year from the date of the dismissal of the unsuccessful

application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any person or trade union representing the employees within any period not exceeding one year from the date of the dismissal of the unsuccessful application;

...

128.1(7) The Board shall not certify the trade union as bargaining agent of the employees in the bargaining unit and shall dismiss the application if it is satisfied that fewer than 40 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed.

...

(12) If the Board is satisfied that at least 40 per cent but not more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it shall direct that a representation vote be taken.

(13) If the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it may,

- (a) certify the trade union as the bargaining agent of the employees in the bargaining unit; or
- (b) direct that a representation vote be taken.

...

128.1 (21) Subsection 7(9) applies, with necessary modifications, if the trade union withdraws the application for certification,

- (a) before the Board takes any action under subsection (7), (12) or (13); or
- (b) after the Board directs a representation vote under subsection (12) or clause (13)(b), but before the vote is taken.

...

19. The issue for determination is whether the 2006 application should be barred from proceeding. I must make that determination on the basis of whether or not to exercise my discretion under section 128.1(21), which draws on section 7(9). It is agreed that no mandatory bar applies in this application.

20. It is clear that the union chose to withdraw the 2005 application knowing that the next step would have been for the Board to order a representation vote under section 128.1(12). The effect of the Board's decision of November 2, 2006 was that at least 40% but not more than 55% of the employees in the bargaining unit were members of the trade union on the date the 2005 application was filed. The Board was mandated to order a vote in that circumstance but did not

get the opportunity to do so because the union chose to withdraw the application and file the 2006 application.

21. There were a large number of status disputes in Board File No. 1542-05-R.

22. The employer and more significantly, the employees, were affected by the lengthy litigation. A number of workers were called to give evidence and many of them would no doubt be called as witnesses in the 2006 application, were it to proceed. Further, the workplace is unsettled when certification litigation is ongoing. In addition, these employees have now twice been subject to a card signing campaign in the recent past and have yet to have a resolution to the representation issue.

23. Although these parties are sophisticated players in labour relations and I am confident could have worked out any change in working conditions that was necessary or they could have brought their concerns to the Board for determination, the statutory freeze creates an artificial restriction in the workplace that the employees and the employer should not be subject to for a prolonged period of time.

24. Board jurisprudence (see *Mathias Ouellette*, (1955) 56 CLLC ¶18,026, and *Mount Sinai Hospital*, [1985] OLRB Rep. December 1780) suggests the Board should impose a discretionary bar when a union withdraws a certification application in the face of a likely defeat at the polls. In *Mathias Ouellette*, *supra*, the Board said:

It seems to us that a trade union should not be permitted to anticipate defeat in a representation vote and escape the consequences of defeat by seeking to withdraw its application after such a vote has been directed by the Board but before the vote has been taken. On the other hand, there have been a few cases the special circumstances of which have led the Board to refrain from imposing a bar upon an unsuccessful applicant even after a representation vote has been taken. Similar circumstances may exist in a case in which a union seeks leave to withdraw after the direction for the vote has been issued but before it is taken, but the existence of those circumstances might come to light only if the Board were to hold a hearing on the request for leave to withdraw an application. In our experience, we have found that a new application by a union which has made such a request is rarely filed within the six month period. Consequently, in order to avoid the necessity of a further hearing in each case where there may be a request to withdraw at the stage of the proceedings indicated above, the Board does not propose to impose an automatic six months' bar, as has been the practice in cases where a vote has been taken, but if the applicant union files a new application affecting the same employees within six months from the date when the application is dismissed, the onus will lie on the applicant to show that special circumstances do exist which would warrant the new application being entertained at that time. To avoid any misunderstanding, the principle of this case relates to situations in which a vote has been directed and in which the applicant union applies for leave to withdraw its application before the vote is taken.

Also, in *Mount Sinai Hospital, supra*, the paragraphs 5 and 6 read:

5. The Board's jurisprudence does indicate that it may exercise its discretion under section 103(2)(i) when an applicant for certification has sought to withdraw the application after a vote has been directed and before the vote is held, if it appears that the trade union anticipated defeat in the representation vote and sought to escape the bar which would have been the consequence of defeat: *Mathias Ouellette*, 56 CLC 18,026. It is also clear that the Board does not impose this bar automatically at the time of the dismissal if the vote has not actually been conducted. Rather, the propriety of a subsequent application within the six month period thereafter is considered only if and when such an application is filed: *Mathais (sic) Ouellette, supra; Fruehauf Trailer Company of Canada Limited*, [1973] OLRB Rep. Oct. 547. If such an application is filed in that period, the onus is said to lie on the applicant to show that special circumstances exist which would warrant the new application being entertained at that time. Because such an onus does arise in those circumstances, the Board's practice when leave is sought to withdraw an application after a vote is directed is to dismiss the application and draw the parties' attention to the Board's decision in *Mathias Ouellette, supra*. That is what we would do here if we accepted the respondent's argument that the applicant's request to withdraw this application should be given the same treatment as it would have been given if made after a pre-hearing vote had been directed.

6. A vote had not been directed at the time the applicant made its request to withdraw. The respondent argues that this is a mere matter of timing, and says the circumstances must be examined to determine whether the motivation was to avoid an unfavourable vote. The difficulty with the respondent's argument is the implicit assumption that a vote by the affected employees was inevitable and, further, that the union knew it was inevitable. No such assumption is necessary when a vote has been directed. When a union's request to withdraw is made after a vote has been directed, a (rebuttable) inference that it expects defeat naturally arises because then, to the union's certain knowledge, no legal requirement other than success in the vote stands in the way of certification. That cannot be said before a vote is directed, and thus no such inference can be drawn, without first determining both that a vote would inevitably have been directed and that the union knew this was so at the time it requested leave to withdraw. That determination would require, in effect, that the Board complete the adjudication of an application which the applicant dos (sic) not wish to pursue, for the sole purpose of determining who shall bear the burden of proof under subsection 103(2)(i) in the event the applicant applies again within six months. Whether or not it makes any sense to engage in what could amount to the full adjudication of a previous application in order to deal with a preliminary objection to the Board's adjudicating a subsequent application, it certainly makes no sense to do so before any subsequent application is filed. Because such an adjudication would be required before the burden of proof described in *Mathias Ouellette* could fall on the applicant, it would be inappropriate for us to warn the applicant that it will bear such an onus.

25. The applicant relies on case law where the Board has said that it will not impose a discretionary bar where the union withdraws other than where there are successive withdrawals. In both *Toronto (City)*, [1996] OLRB Rep. July/August 552, [1996] O.L.R.D. No. 2480 and

R.J.R. MacDonald Inc., [1992] OLRB Rep. April 503, the Board discussed the purpose of the bar and the fact that the discretion to impose a bar is not normally exercised unless employees have had the opportunity to have their wishes tested. The period of repose contemplated by the Act should be provided after employee wishes have been tested (see *Sara Lee Bakery Canada*, [1996] OLRB Rep. May/June 480, [1996] O.L.R.D. No. 1795). The applicant distinguishes *Mathias Ouellette*, *supra*, which spoke of imposing a discretionary bar when a union withdrew in anticipation of defeat at the polls, on the basis that the vote was held although not counted.

26. In the instant case, the vote was inevitable, and the union knew it. I am not persuaded that there is good reason in this case to depart from the established law outlined in *Mathias Ouellette*, *supra*.

27. The cases relied on by the applicant – *Supply Chain Management Inc.*, *supra* and *Husmann Canada Inc.*, *supra* – do not apply to my consideration here because, in these cases, the union conceded to the dismissal of the applications based on the employer's section 8.1 challenge. The Board's approach to dismissal under section 8.1 are not relevant to the Board's approach to withdrawal under section 128.1.

28. The Board has discretion which must be exercised having regard to the specific considerations in each case. In this case, a persuasive factor is that while a union can withdraw an application that is proceeding under section 128.1, the stage of the proceeding at which it seeks leave of the Board to withdraw its application, is significant.

29. After realizing that it did not have sufficient membership support for certification without a vote, the applicant withdrew its application when the challenges were resolved. This is a far different circumstance than when a union withdraws early on, after seeing the employer's response and learns that there are many more people in the unit than it had initially believed. Here, the parties have been litigating over who is in the bargaining unit, and the union cannot establish more than 55% support.

30. In this case, the union and the employer have been litigating over a number of positions. The Board made a decision about which positions are in the unit and which are out of the unit. That determination has consequences; otherwise the positions would not have been litigated by the parties. When the union discovered that it had lost more positions than it had anticipated, rather than face a representation vote, it decided to withdraw its application. It is not fair to the employer, who having successfully resisted some of the union's positions, to have to start all over again. Further, the employees and employer are entitled to a period of repose after a long period of uncertainty.

31. Having regard to all the above, Board File No. 1542-05-R was withdrawn by the applicant on November 30, 2006. Pursuant to section 7(9) of the Act, the Board will not entertain another application for certification by the applicant as the bargaining agent of employees in this bargaining unit until six months have elapsed from November 30, 2006. Accordingly, Board File No. 2724-06-R is dismissed.

32. The employer is directed to post a copy of the attached Appendix "A" - "Notice to Employees" where it most likely will come to the attention of those individuals affected by the

Board's decision. This notice shall remain posted for a period of **thirty (30) days** from the date of this decision.

Appendix "A"

The Labour Relations Act

NOTICE TO EMPLOYEES

Posted by order of the Ontario Labour Relations Board

Re. Board File Nos. **1542-05-R; 2724-06-R** International Union of
Operating Engineers, Local 793, Applicant v. **K. J. Beamish**
Construction Co., Ltd., Responding Party.

The union filed two applications for certification.

The first application has been withdrawn by the union effective November 30, 2006. The second application is, for the reasons set out in a decision dated June 14, 2007, dismissed. This union cannot apply for certification for this bargaining unit of employees for six (6) months beginning from November 30, 2006.

Should any person who is or may be affected by this application wish to have a copy of the Board's full reasons for this decision, one may be obtained either from the employer, the union or the Board's offices.

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This is an official notice of the Board and must not be removed or defaced.
THIS NOTICE MUST REMAIN POSTED FOR 30 CONSECUTIVE DAYS.

Dated this 15th of June, 2007

0098-07-R Labourers' International Union North America, Local 527, Applicant v. **Lemmo Masonry Inc.**, Responding Party

Certification – Construction Industry – Practice and Procedure – Timeliness –
The Board finds that in a card-based application for certification, there is no prejudice to the union if the responding party fails to provide the response to the union at the same time it files it with the Board – The response was delivered to the applicant one week after it was due – The Board relieves against the late delivery of the response – Matter continues

BEFORE: *Susan Serena*, Vice-Chair.

DECISION OF THE BOARD: May 8, 2007

1. This is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") that the applicant elected to have dealt with under section 128.1 of the Act.

2. By decision dated April 19, 2007, the Board (differently constituted) provided the parties with the opportunity to make written submissions about the timing of the receipt of the application by the responding party and the failure on the part of the responding party to deliver its response to the applicant as required by Rule 7.4 of the Board's Rules of Procedure.

Delivery of the Application to the Responding Party

3. There is no dispute between the parties that the applicant endeavoured to deliver the application for certification to the responding party by facsimile on April 5, 2007. However, only 38 of 48 pages were successfully transmitted to the responding party. The responding party contends that it did not receive the application until it arrived by courier "some time on Friday April 13th, 2007".

4. The union contends that it made two further attempts on April 5th to transmit the application to the responding party by facsimile but when these efforts were thwarted the union made arrangements on April 5th to have the application delivered to the responding party by Priority Courier. The certificate of delivery filed by the union indicates the application will be delivered to the responding party on April 10, 2007 by no later than 12 noon.

5. The tracking information provided by the union indicates the package with the tracking number assigned to the item addressed to Lemmo Masonry was accepted for delivery by Canada Post on April 5th and was successfully delivered to the responding party on the morning of April 10, 2007.

6. In the absence of any further information from the responding party to explain the discrepancy between the date when it asserts it received the application and the information provided by the union, in particular the tracking documentation from Canada Post, the Board finds that the application for certification was delivered to the responding on April 10, 2007.

Delivery of the Response to the Union

7. The responding party filed its response with the Board on April 12, 2007, which is within the time stipulated by Rule 25.5 of the Board's Rules of Procedure. The responding party also provided the Board with the requisite information in accordance with subsection 128.1(3) of the Act. However, the responding party did not deliver a copy of its response to the applicant until April 19, 2007 even though Rule 7.4 provides as follows:

7.4 Before, or at the same time as, filing its response with the Board, the responding party must deliver a copy of the completed response to the applicant and to any other party.

8. In support of its request that the Board exercise its discretion under Rule 40.7 and Rule 3.2 to permit the late delivery of the response to the union the responding party asserts as follows:

- a. the union has not suffered any prejudice by the late delivery of the response;
- b. the union would not normally make any further submissions to the Board after receiving the response;
- c. the failure to deliver the response to the union was due solely to responding party's misunderstanding of the Board's requirements and the haste in which the responding party completed the response in order to deliver it to the Board before the 5:00 p.m. deadline on April 12, 2007.
- d. the responding party did not receive the complete application package (including a copy of the Board's Rules) until April 13th, 2007;
- e. the obligation to deliver a copy of the response to the union is a requirement of the Board's Rules and not the Act itself. Therefore pursuant to Rules 3.2 and 40.7 the Board can extend the time for the delivery of the response in the appropriate circumstances;
- f. the responding party was not attempting to deceive either the Board or the union when it filed a certificate of delivery indicating the response was delivered to the union on April 5, 2007 which is an obvious error and refers to the date when the union endeavoured to send the application to the responding party by facsimile.

9. The union asserts that the responding party's failure to deliver a copy of the response to the union in a timely manner means that the response was not filed with the Board in accordance with the Rule 7.4. As a result, the union submits that the Board cannot consider the information provided in and with the response when it determines the application pursuant to section 128.1(4) of the Act. The union referred the Board to a number of decisions in which the Board has refused to relieve against the requirement to deliver a copy of an application in a timely manner to an opposing party.

10. Rules 3.2 and 40.7 provide as follows:

3.2 The Board or the Registrar may shorten or lengthen any time period set out in or under these Rules, as either considers advisable.

4.07 The Board may relieve against the strict application of these Rules where it considers it advisable.

11. In *St. Joseph's Health Care London* [2000] OLRB Rep. May/June 558 the Board exercised its discretion to relieve against strict compliance with the rules in circumstances where the union was not prejudiced by the applicant's failure to deliver the application to the union at the same time as it was filed with the Board. Further, in *Maystar General Contractors Inc.*, (2007 CanLII 8928 (O.S.D.C.); [2007] O.J. No 1067) the Division Court held that the Board had the discretion to relieve against the statutory time limit provided in section 128.1(3).

12. The Board is satisfied that this is an appropriate case for the Board to relieve against the strict application of Rule 7.4 and to consider the response filed in this matter. Carelessness and ignorance of the Rules do not provide a basis for the Board to relieve against the Rules. However, in this case the union elected to proceed under section 128.1 of the Act. As a result, unlike an application for certification filed under s. 8 of the Act, there is no prejudice to the union flowing from the responding party's failure to provide the response to the union within the time period required by Rule 7.4. The union is not disadvantaged because it did not receive a copy of the response at the same time it was filed with the Board.

13. Therefore, the Board finds that the responding party filed its response with the Board within the time stipulated by Rule 25.5 of the Board's Rules of Procedure and provided the Board with the requisite information in accordance with subsection 128.1(3) of the Act.

14. The Board finds that this is an application for certification within the meaning of section 128 of the Act and is an application made pursuant to section 158(1) of the Act which provides that:

42 An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126 shall be brought by either,

(a) an employee bargaining agency; or

(b) one or more affiliated bargaining agents of the employee bargaining agency,

43 on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition.

15. The Board further finds, pursuant to section 158(1) of the Act, that all construction labourers in the employ of the responding party in the industrial, commercial and institutional

sector of the construction industry in the Province of Ontario and all construction labourers in the employ of the responding party in all other sectors of the construction industry in The City of Ottawa and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining.

16. On the basis of only the information provided in the application (including the information and membership evidence filed by the applicant) and the information provided under subsection 128.1(3) of the Act, the Board is not able to determine the percentage of employees in the bargaining unit who were members of the applicant as of the date the application was filed. The Board will determine that following a Regional Certification Meeting. Representations with respect to any status dispute must be made in accordance with the directions provided in Parts II, III and IV in Information Bulletin No. 9: Status Disputes in Certification Applications in the Construction Industry.

17. The responding party contends that the individuals in the bargaining unit who signed union cards were not aware that they were agreeing to become members of the union. However, the responding party does not dispute that these individuals were member of the union on the application date. Section 128.1(4) of the Act directs the Board to determine the percentage of employees who are members of the union on the application date on the basis of the information provided in or with the application for certification and the information filed by the responding party in accordance with section 128.1(3). Section 128.1(5) then provides as follows:

Nothing in subsection (4) prevents the Board from considering evidence and submissions relating to any allegation that section 70, 72 or 76 has been contravened or that there has been fraud or misrepresentation, if the Board considers it appropriate to consider the evidence and submissions in making a decision under this section.

The impact, if any, of section 128.1(5) on this application will be dealt with, if necessary after the Regional Certification Meeting.

18. The responding party is directed to post copies of this decision in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit.

19. This matter is referred to the Manager of Field Services to conduct a Regional Certification Meeting.

4138-06-M Brick and Allied Craft Union, Kerry Wilson, Tom Williams, John Haggis, Joe Plunkett, Cameron MacKay and Frank Rocca, Applicant v. **Marble, Tile & Terrazzo, Local 31 Ontario of the Brick and Allied Craft Union of Canada, Joe Tersigni, Domenic DeCaria, Jocelyn Montheith, Nicola Vescio, Frank DeLio, Michael Ragazzon, Elvio Ragazzon, Nicola Boragina and Mario Leone**, Responding Parties v. International Union of Bricklayers and Allied Craft Workers, and Craig Strudwick, Intervenor

Interim Relief – Trusteeship – Local 31 filed a s. 149 application challenging the imposition of supervision over it by BACU – BACU sought interim relief from the Board to be able to continue its trusteeship because of the Local's alleged failure to resist displacement overtures brought by another union – The Board held that s. 98(1)(a) gave it the authority to do what was necessary to preserve its processes; an interim ruling might well be required to preserve some prevailing conditions for the purpose of being able to adjudicate them – The Board found that BACU had successfully met the three factors necessary for the granting of interim relief: (1) BACU has put forward a defence to the s. 149 complaint that makes out a strong *prima facie* case; (2) the parent union will suffer irreparable harm in that if the relief is not granted, their ability to participate meaningfully in the litigation will be nullified; and (3) the balance of labour relations harm points to maintaining the integrity of the Board's processes until the substantive relief can be adjudicated – Furthermore, Local 31 appeared to have taken the law into its own hands rather than have the Board or the courts deal with its dispute with BACU when it transferred its assets to a new membership trust fund – The Board amended its earlier ruling of April 16, 2007 and refrained from making any order with respect to the trust fund; similarly, it made no determinations with respect to other monies held by the various parties in these proceedings – **Interim relief granted**

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *Ian J. Fellows, Ania Zbyszewski, Kerry Wilson* and *Cameron MacKay* for the applicant; *Christopher Wirth* and *Joe Tersigni* for the responding parties; *Donald K. Eady, Graeme Aitken* and *Craig Strudwick* for the intervenor.

DECISION OF THE BOARD: May 4, 2007

1. This is an application under section 98 of the *Labour Relations Act, 1995*, S.O. 1995, ch. 1, as amended (the "Act") seeking interim relief in a pending proceeding. The applicant is the Brick and Allied Craft Union of Canada ("BACU"), the responding party is its Local Union, Brick and Allied Craft Union of Canada, Local 31 ("BACU Local 31"). The International Union of Bricklayers and Allied Craft Workers ("IUBAC") filed an intervention seeking essentially the same relief that the BACU sought with respect to its Local, International Union of Bricklayers and Allied Craft Workers, Local 31 ("IUBAC Local 31"). Collectively, the two Locals, which operated in unison, are referred to as "Local 31".

2. This application arises out of a supervision or trusteeship imposed by the BACU on BACU Local 31, followed shortly by a similar trusteeship by IUBAC against IUBAC Local 31. The BACU imposed its supervision on March 9, 2007. In response, BACU Local 31 filed an application under section 149 on March 16, 2007 challenging that supervision order. The IUBAC undertook to intervene in the section 149 application, or bring its own application, and Local 31 took no issue with respect to the fact that it sought an order as an intervenor.

3. A consultation was scheduled for April 13 and I gave an oral decision that day that was recorded in written form by decision dated April 16, 2007, although the order was effective April 13, 2007. This decision modifies certain of those orders and contains the full reasons for all of the orders.

The Issue

4. The BACU stated that it had imposed supervision on Local 31 for "just cause". In this case, the cause was its conclusion that the officers of Local 31 had failed to protect the bargaining rights of Local 31 or had in fact assisted in a series of raids brought by Bricklayers, Masons Independent Union of Canada, Local 1 ("Brick Local 1") and Universal Workers Union, Labourers International Union of North America, Local 183 (the "UWU"). In response, Local 31 states that it did not have just cause, and that in any event, the BACU did not follow the procedures set out in its Constitution.

5. This was an application for interim relief, not an inquiry into whether or not the BACU (and later the IUBAC) had "just cause" within the meaning of either Unions' Constitution or section 149 of the Act. It is a request for interim relief until that is determined. The BACU (and the IUBAC) seek orders confirming the Supervision (or Receivership under the IUBAC Constitution) of Local 31, giving control to the BACU (or IUBAC, if appropriate) of Local 31's records and assets, and restricting the use of certain monies transferred to a trust fund in January 2007.

6. There are essentially two primary issues to be determined in this application, whether the Board ought to grant any relief and whether the Board has the jurisdiction to grant any or all of the relief it considers appropriate

The Facts

Facts relied on by the BACU and the IUBAC

7. The BACU and IUBAC concluded that the Executive of Local 31 was failing to resist or was actively cooperating in raids brought by UWU and Brick Local 1. They relied on the following facts as set out in a summary of its application:

- (a) On or about January 25th, 2007 two of three full time staff persons at Local 31 resigned their positions and immediately commenced working as organizers for LIUNA in its campaign to raid Local 31;
- (b) The elected representatives of Local 31 including the sole remaining full time Local 31 official failed to inform BACU of the resignations until nearly two weeks later;
- (c) On January 31st, 2007 the leadership of Local 31 transferred all of the monetary assets of Local 31 to a trust without approval of the membership;
- (d) On February 1st, 2007 LIUNA filed the first of some 35 displacement applications (the last of which having been filed on or about March 9th, 2007) covering all or nearly all of the employers in respect of whom Local 31 holds bargaining rights;
- (e) The Local has failed to campaign against the displacement applications;
- (f) No literature opposing the displacement applications has been distributed by the leadership of Local 31;
- (g) The leadership of Local 31 has not called on its members to support Local 31 or to vote for Local 31 in the displacement applications;
- (h) The leadership of Local 31 has not attended job sites to urge Local 31 members to vote in favour of the Local 31;

- (i) Local 31 failed to hold a membership meeting addressing the existential threat of the LIUNA raid until Feb. 26th, 2007;
- (j) At the meeting held on February 26th, 2007 the leadership of Local 31 allowed former staff persons who defected to LIUNA to attend and to speak in favour of the raid;
- (k) At the meeting held on February 26th, 2007 the former leadership of Local 31 spoke against BACU stating that it would like to tell BACU TO "fuck, itself", and that the President of BACU is a "piece of shit";
- (l) At no time during the meeting held on February 26th, 2007 did the former leadership make any argument against the raid, nor did the former leadership even urge members to vote in favour of Local 31;
- (m) At the meeting held on February 26th, 2007 the former leadership claimed that it was remaining neutral with respect to the raid;
- (n) The leadership of the Local has refused all offers of support from BACU and its Locals with respect to campaigning against the LIUNA raids;
- (o) On March 9th, 2007 BACU acting pursuant to its constitution placed Local 31 under Temporary Supervision, however the former leadership of Local 31 have refused to cooperate with the Temporary Supervisor, they continue to hold all the property and assets of the Local, and have threatened BACU with police action in the event it exercises its rights with respect to Local 31.

8. The response of Local 31 contains few disagreements as to the actual facts, although it disputes the inferences that ought to be drawn from those facts. With respect to certain facts, Local 31 does not deny the facts, but seeks to put them in a different context. For instance, it does not deny that it did not inform the BACU of the resignation of two of the three full-time staff persons for two weeks. However, it explains that delay by asserting that they had taken holiday time and the Business Manager, Mr. Tersigni, did not expect to see them at work and only became aware of their resignations when a misplaced letter finally arrived on his desk. It agrees that it did not circulate any material urging persons represented by Local 31 to vote in favour of Local 31 in any representation application because, in the view of Local 31, the pamphlets of the BACU adequately covered the situation.

9. At times it disputes the facts as alleged. For instance, with respect to the February 26, 2007 membership meeting, it does not dispute that the two former staff members were allowed to speak, but denies the statements attributed to Mr. Tersigni and others at paragraph (k). Mr. Tersigni's declaration states:

57. In fact, at the meeting of February 26, 2007, I reported to the members about an incident that had happened between Wilson and myself, as described at paragraph 18 and 19 of the Complaint. In that incident, I told the members that I was furious with Wilson because of his role in what I perceived to be support for misdirecting money belonging to Local 31 members in the Promotion Funds. I told them that Wilson and I exchanged strong words, close to those described in the Declarations, that Wilson's response was to push me, that I had charged him, and that my charges had been ignored by the BACU.

Regardless of which version one prefers, it is evident that in the face of an exhortation by two former officers of Local 31 to join another union, the only comments from the Business Manager

of Local 31 were highly critical of the BACU and not at all supportive of the local union whose most important office he held.

10. Local 31 maintains that the supervision was imposed as a result of longstanding disputes between the BACU and Local 31. That is a matter that the Board will consider in due course. However, I note that none of the incidents that Local 31 points to as giving rise to this particular institutional friction led to any action by the BACU consistent with supervision before the 35 displacement applications were filed.

Procedure followed by the BACU

11. The BACU Constitution provides that if it believes it has just cause to impose supervision, it may do so on a temporary basis ("Temporary Supervision"). If it does so, it must conduct a hearing before an arbitrator named in the Constitution to determine if it did, in fact, have just cause for a longer-term supervision.

12. The BACU imposed a temporary supervision on Friday, March 9, 2007. A hearing was set for Monday, April 9, 2007, 31 days later. It ordered the Business Manager, Ralph Tersigni, to cooperate in the orderly transfer of assets and premises of Local 31 on Tuesday, March 13, 2007. Mr. Tersigni and Local 31 refused to cooperate with the Temporary Supervision, contrary to the terms of the BACU Constitution. They continued to occupy the premises of Local 31 and threatened to call the police if the BACU attempted to take control of the physical premises.

13. Local 31 appeared at the Independent Hearing Tribunal ("IHT") hearing on April 9, 2007 and took the position that the hearing was void because it was held out of time, that is, 31 calendar days after March 9, 2007. The thirtieth day after March 9, 2007 was, of course, a Sunday. It then consented to adjourn the hearing to a later date. While the *Interpretation Act* does not apply to the BACU Constitution, this technical objection, if it has any merit at all, is not one that the Board would give much weight to. Whether the IHT under the BACU Constitution will is a matter for him to decide.

Jurisdiction of the Board

14. Local 31 argued that the relief sought in this application was substantive rather than procedural and that such relief should be sought in the Superior Court of Justice rather than the Board. Clearly, the word "procedural" in section 98 has a limiting meaning, and certain types of relief can only be granted by the Superior Court of Justice while an application is pending.

15. The initial determination of what the Board does and does not have the jurisdiction to do under section 98 (or any other) should be made by the Board. In a lengthy and carefully-reasoned decision in *International Union of Bricklayers and Allied Craftworkers v. Coelho* [1998] O.J. 5449, Justice Sharp (as he then was), concluded that the Superior Court of Justice ought not to act until the Board had determined the issues before it. In that case, the motion was brought to stay certain actions in the Superior Court of Justice, and the Court deferred to the Board's substantive and final decisions in various complaints that were filed. The Court concluded that the Board was a specialized tribunal with expertise in the area of labour relations, whose jurisdiction was protected by a strong privative clause. Since the Act required the Court to

defer to the Board's considerations, it was appropriate to seek relief from the Board first and turn to the Superior Court of Justice only when relief was determined by the Board to be beyond its jurisdiction, or in seeking judicial review. It is therefore appropriate for the Board to make the initial determination about what it may and may not do under section 98.

16. In considering the extent of the Board's jurisdiction to grant interim procedural remedies, the Board has fashioned remedies under section 98 that go beyond the simple scheduling of hearing dates and directions as to the manner in which a case is to be litigated. In *Ontario Hydro*, [1999] OLRB Rep. Mar./Apr. 202, the Board concluded that it could make interim orders under the somewhat differently decided predecessor section and issued certain orders about the conduct of the trusteeship pending the final resolution of the application filed with the Board. I note in that case that the local union did not dispute the Board's jurisdiction to do so.

17. In *Labourers International Union of North America, Local 183*, [2004] OLRD 3685, Board File Nos. 2320-03-M, 2049-03-U (March 17, 2004) and *United Brotherhood of Carpenters and Joiners of America, Local Union 93* [2005] OLRD 5134, Board File Nos. 2069-05-U, 3055-05-M (December 21, 2005), the Board considered its jurisdiction to deal with matters pending the final determination of this kind of application under section 149. In both cases, the interim relief was sought by the local union seeking to preserve its ability to maintain control of the local and to have access to the funds of the local union in order to litigate the section 149 application. That is, the Board was prepared to treat as procedural orders that made it possible for the local union to proceed with the main application. In doing so, the Board was preserving the integrity of the litigation by ensuring that one party was not effectively rendered powerless by the very act that was the subject of the application.

18. These decisions give the word "procedural" a meaning beyond the mere scheduling of hearing dates and pre-hearing production and pleadings. Indeed, if that were the only meaning to be ascribed to section 98, the section would be redundant. The Board has sufficient authority under the Act, and in particular section 111, and the *Statutory Powers Procedure Act* to control its process with respect to such mechanical matters.

19. In 1999 when *Ontario Hydro, supra*, was decided section 98 provided:

98 (1) The Board may make interim orders concerning procedural matters on application in a pending proceeding and, with respect to the Board, the power to make interim orders under this subsection applies instead of the power under subsection 16.1(1) of the *Statutory Powers Procedure Act*.

(2) The Board shall not make an order under subsection (1) requiring an employer to reinstate an employee in employment.

The Board concluded that if it was necessary to exclude specifically the power to reinstate an employee pending the final decision in a matter, then the word "procedural" must include much more than simple scheduling and hearing processes. In 2005, section 98 was amended in its present form to permit the interim reinstatement of employees but only under certain defined circumstances. That is, the section still prevents the Board from using the power in subsection 98(1) to order interim reinstatement of employees in other circumstances where it may appear "just and convenient" to do so.

20. It is worth noting that this amendment was made after the Board's decision in *Ontario Hydro*, *supra*. The legislature changed the wording of subsection 98(1) from:

1. (1) The Board may make interim orders concerning procedural matters on application in a pending proceeding.

to its current form in subsection 98(1)(a):

(1) On application in a pending proceeding, the Board may,

(a) make interim orders concerning procedural matters on such terms as it considers appropriate;...

This legislative history does not suggest that the Legislature saw any need to correct the approach taken in *Ontario Hydro*, *supra*. Indeed the last added phrase ("on such terms as it considers appropriate") appears to give the Board a wider discretion with respect to bring to bear its own view of what is appropriate in making a decision under section 98.

21. In the *Labourers International Union of North America Local 183*, *supra*, and *United Brotherhood of Carpenters and Joiners of America, Local Union 93*, *supra*, the Board interpreted subsection 98(1)(a) as giving the Board the power to do what was necessary to preserve the process of the Board pending the litigation of the application before it. The orders made were "procedural" because they preserved the Board's process from becoming irrelevant by the time a decision was made. To some extent, that exercise involves an identification of the legal rights at issue in the proceeding, and an assessment of the likelihood of certain events occurring in the short term. To the extent that an order is necessary to preserve some meaning for the Board's process, it may well be required to preserve some prevailing conditions for the purpose of being able to adjudicate them.

The appropriateness of any relief

22. In *United Brotherhood of Carpenters and Joiners of America, Local Union 93*, *supra*, the Board stated:

The Board also confirms the appropriate considerations here to determine whether to exercise its discretion to grant relief under section 98(1) (a) are [1] whether there is a serious issue, [2] whether there would be irreparable harm to the applicant if relief is not granted, and [3] thirdly, where the balance of labour relations harm and public interest lies.

With respect, I agree that these are the appropriate considerations in this case as well, along with one additional consideration that arises from the Local Union's resort to self-help remedies. The parties did not suggest any other consideration that should form my decision in this case.

23. In *Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers v. IUBAC*, [2001] O.L.R.D. 1744, Board File No. 2148-00-U, the Board summarized the considerations that had emerged from cases before that date in applying section 149 to any imposition of supervision. These considerations are:

- 1) A parent union has the right to protect and advance the primary values and the institutional integrity of the Union. A parent and a local union may be in conflict, but they are not strangers in an arms-length relationship.
- 2) The parent union does not require the consent of the local union to take action.
- 3) The parent union may impose a temporary trusteeship on a local union to correct a specific problem and must relinquish that control of the local union once the problem has been corrected.
- 4) The power of the parent union to impose a trusteeship (in the classic sense) is limited by section 149....
- 5) Local unions are entitled to be in conflict with their parent unions. The extent to which they are entitled to be in conflict is inevitably fact driven. It will usually be the case that a local union is entitled to avail itself of any rights to which it is entitled *by virtue of the statute*, notwithstanding any degree of conflict with the parent that the exercise of such rights may generate. The issue of the institutional relationship between the parent union and local unions in Ontario is one which may lead to conflict. The fact that a local union may wish to pursue a more independent course from the parent than the parent would like is not, *in and of itself*, just cause for interfering in local union's affairs by means of trusteeship or other methods of control. The steps a local union undertakes in pursuit of such greater autonomy *may* justify trusteeship.
- 6) The parent union may have just cause to impose a form of trusteeship when the actions of the local union go beyond "legitimate dissent" and constitute a threat to the values of a union, or to its ultimate institutional integrity, or to the financial or institutional stability or survival of the local union, provided that none of these factors would unduly prevent the local union from effectively exercising its rights, duties and privileges under the Act. Much will depend on an assessment of the facts in each case.
- 7) Process, which need not meet the standards of "natural justice" that a tribunal such as this Board must adhere to, will be of varying degrees of importance. In IBEW #1 the Board gave great weight to the result and little to the process. In contrast in Board File No. 2532-98-U the Board placed significant weight on a lack of process. ...

24. These then are the general propositions about the rights of both a parent union and a local union that are at play in any conflict between them under section 149. In addition, there are a number of facts in this application that are unique to this situation. Local 31 is not a small component of the BACU. It represents the majority of marble, tile and terrazzo workers and tile setters and its membership constitutes a sizable proportion of the total membership of the BACU. That is, the institutional integrity of Local 31 affects the institutional integrity of the BACU to a greater extent than might normally be the case.

25. While the section 149 application is being litigated, there are a number of certification applications that have also been filed. Certification applications are generally treated by the Board with greater expedition than complaints filed under section 96, including this one. Since there is a serious issue as to whether Local 31 is prepared to defend itself, and by extension, itself as a part of the BACU or IUBAC, there is a very real likelihood that neither the BACU nor BACU Local 31 or IUBAC Local 31 would be able to defend its interests in those applications. The Board must be careful not to permit its process to be used by parties to undermine the procedural integrity of its own determinations.

26. It is not necessary or appropriate to determine the question of just cause, or to resolve any disputed facts. It is sufficient to say that the BACU has put forward a defence to the section 149 complaint that raises very serious issues. That is sufficient for the purposes of this application for interim relief. Indeed, in these circumstances, the BACU has put forward, on a *prima facie* and untested basis, a fairly strong *prima facie* case.

Irreparable Harm

27. The second issue relates to preserving the capacity of both parties to litigate these matters in a meaningful manner. In *United Brotherhood of Carpenters and Joiners of America, Local Union 93*, *supra*, the Board concluded that the failure to grant the relief sought would, in practical terms, make it impossible for the local union to proceed with the main application if it were granted. In this case, as noted above, the BACU has acted to protect and preserve its legitimate institutional rights and interests. Local 31's response in resisting the Temporary Supervision was without legal justification. In my view, it is necessary to avert irreparable harm in a procedural sense to grant the relief sought, as any rights of the BACU as a parent union to take certain actions provided it has just cause, would be sterilized until they no longer have any meaning. Relief is therefore necessary for the Board to preserve the procedural integrity of its own ability to adjudicate matters that come before it.

Balance of Labour Relations Harm and Public Interest

28. While there are disputes between Local 31 and the BACU, it exists as a single integrated institution (as does IUBAC Local 31 and the IUBAC). The UWU and Brick Local 1 seek to displace it on an institutional basis. Whether it does or not will be determined by employees, not by either trade union or by the Board. However, the BACU and its affiliated Local Union must be in a position to preserve, if possible, those institutional rights and interests. If the application is not granted, it will be unable to do so to any real degree.

Other considerations

29. This, of course, is the reverse situation to the one found in the *Labourers International Union of North America Local 183*, *supra*, and *United Brotherhood of Carpenters and Joiners of America, Local Union 93* cases. The interim relief is sought by the parent union.

30. However, for the parent unions, the issue is not merely the financial one that the Local union faces. The parent unions have the financial resources to carry on the litigation, for whatever period of time is required. However, the kinds of rights, and the balancing of those interests described in the *Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers v. IUBAC* case above, have been thrown out of balance by

Local 31. It has chosen, without any significant colour of right, to ignore the provisions in its own By-laws and Constitution that require it to comply with a Supervision in some fashion other than calling the police when a representative of the parent union appears. Local 31 did not come to this Board seeking interim relief, but rather relied on its own ability to take the law into its own hands. In seeking to preserve the process of the Board so that it has any meaning at all, the Board will always have regard to the propensity of one party to rely on self help remedies without legal sanction rather than seeking appropriate relief from the Board or from the Superior Court of Justice, if that is where it believes it must go.

The Local 31 Membership Trust Fund

31. Local 31 argued that the Board could not make any orders with respect to certain monies held by an entity called the Local 31 Membership Trust Fund. In January of 2007, the major financial asset of Local 31 was a sum of over \$360,000, which was held as a form of loan by the Local's building corporation. Local 31 called the loan and obtained a return of the money. The Executive Board of the Local then transferred the money into a newly created Trust Fund – the Local 31 Membership Trust Fund. The beneficiaries of the fund are defined as

“the members in good standing of the Union, or one or some or all of them as at January 31, 2007”

Article 4 of the Trust provides:

4.1 The capital of the trust Property shall be paid to the Beneficiaries as directed by the Trustees, who shall, in their sole discretion, determine the time and method of payment, subject to Article 4.2, 4.3, and 4.4 herein.

.....

4.4 The Trustees may consider, from time to time, requests by the Union for the payment of its operating expenses from the Trust Property. The Trustees are authorized to make such payments from the Trust Property as, in their sole discretion, they deem reasonable in the circumstances. Such payments are subject to subsequent approval by the members of the Union.

32. At the consultation, Local 31 said that this was done in order to protect the local's assets from any raiding union. The explanation makes no sense. If other unions were successful in displacing Local 31 as bargaining agent, they receive nothing from Local 31 at all. The Board would terminate the bargaining rights of Local 31 and certify the displacing union as bargaining agent. The BACU asserts that this action was taken only to “hide” the money from the BACU.

33. It is not within the jurisdiction of the Board to determine the propriety of the transfer of monies into the trust or the ownership of the monies held by the Trust. I note however, that Local 31 referred me to no authority whatsoever to suggest that individual members of a local union, by virtue of their membership, have some sort of personal right to the assets. I am not aware of any such authority. Certainly Articles 3, 6, 13 and 15 of the Local's By-laws suggest the contrary. I am aware of one case that suggests that even where union members are beneficiaries of a trust fund, they do not thereby acquire a right to the body of that fund when the objects of the trust have been satisfied: *Re Board of Trustees of Provincial Plasterers' Benefit Trust Fund and Provincial Plasterers Benefit Trust Fund* (1990) 71 O.R. (2d) 558.

34. On further consideration, I conclude I did go beyond the Board's jurisdiction in making orders with respect to the use to be made of the Trust Fund. Leaving aside the fact that the trustees are named, but only in their individual capacity, and the fact that the Fund was not named as a responding party, the orders I made would achieve only the preservation of the asset pending the outcome of this litigation. Since the Board does not have the jurisdiction to determine the true ownership of the monies held by the Fund, there is no process of the Board that the interim order could preserve. Thus I conclude that the order must be modified substantially.

35. The BACU is now in control of the assets and the income of Local 31. I make no order with respect to what the current assets in the hands of Local 31, or the future income of Local 31 should be used for. The Supervisor of Local 31 will decide what it is appropriate to spend the monies on.

36. I make no order of any sort with respect to the monies held in the Local 31 Membership Trust Fund. I conclude that it is beyond the jurisdiction of the Board to do so.

37. In *Labourers International Union of North America Local 183, supra*, and *United Brotherhood of Carpenters and Joiners of America, Local Union 93, supra*, the Board found it appropriate to make an order requiring that the Local Union applicant have access to the finds of the Local Union to pay for the conduct of the application. In the Carpenters case, the Board required personal indemnities from the officers involved because of their conduct in the application. As is apparent from the April 13, 2007 decision, I initially thought the same sort of order was appropriate in this case. However, I have concluded it is not.

38. In this case, Local 31 has decided to transfer the chief asset of the Local Union out of the direct control of the Local Union and, potentially to transfer it to other persons. It advanced no legal justification for the decision to do so. Its proffered reason of protecting the asset from raiding unions is not credible. Hence, while seeking the assistance of the Board under section 149, it had taken care to remove the major liquid asset out of the direct control of Local 31 (though not of some of the individual applicants in the main section 149 application), and hence beyond the Board's purview. To the extent that Local 31 seeks to rely on self-help remedies, particularly where they have offered no legal justification for doing so, the Board declines to order any interim relief of that sort.

39. I therefore revoke the orders contained in paragraphs 9(6), 10, 11, and 12 of the April 16, 2007 decision, effective the date of this decision. It is not appropriate to make any order with respect to the Local 31 Membership Trust Fund, and those dealing with that fund from this point onwards must govern themselves as they see fit and deal with the consequences of their actions in another forum than the Board.

Conclusion

40. I find therefore that all three of the factors the Board has considered in this kind of application point strongly to the granting of the relief sought by the BACU and the IUBAC. The parent unions have put forward a case that raises, at the very least, a very serious issue. They will suffer irreparable harm if the relief is not granted, in a sense that their ability to participate meaningfully in important litigation before the Board will be nullified. Finally, the balance of labour relations harm to the public and the public interest point to maintaining the integrity of the

Board's process until substantive relief can be determined. For these reasons, I made the orders set out in the decision dated April 16, 2007 and below:

41. I make the following orders and directions:

- (1) The Board declares that BACU Local 31 is under the supervision of the BACU;
- (2) The Board declares that IUBAC Local 31 is under receivership by the IUBAC;
- (3) The Board directs Local 31 and the responding parties to this application to transfer control of the assets (including all books, records, documents, cell phones, computers, computer records, membership lists, and any and all information obtained during their term of office or employment, funds, money and any other property) forthwith to the BACU supervisor or the IUBAC Receiver as appropriate;
- (4) The Board directs the responding parties not to interfere with the supervision and receivership of the BACU and IUBAC of Local 31;
- (5) The officers (to the extent that their positions are not specifically dealt with by the relevant constitution upon the imposition of supervision or receivership) and the employees of Local 31, are to follow the directions of the Supervisor or Receiver with respect to their duties for and on behalf of Local 31, and will hold office or continue in employment as the Supervisor or Receiver determines.
- (6) The Board makes no order with respect to the funds held in the Local 31 Membership Trust Fund after the date of this decision. The Board also makes no order with respect to the payment of fees for the conduct of this or any other litigation.

Matters arising since the April 13, 2007 decision

42. The Board has received correspondence from both parties in this proceeding since the decision was issued in an abbreviated form on April 16, 2007. Most of them point to the limits of the Board's jurisdiction in these matters, and the need to deal with the main application as quickly as possible. I shall deal with each of these in order.

Suspension of Local 31 officers

43. Counsel to the responding parties has written complaining that Messrs Tersigni, DeCaria and Raggazon have been suspended without pay. They assert that the BACU's position at the consultation in this matter was that they would be suspended with pay. Counsel for BACU Local 31 and the three individuals has referred to the fact that certain statements were made in the application for interim relief made by the BACU about the intention of the BACU if the relief sought was granted. The BACU has responded saying that their actions were justified given what occurred after the supervision of Local 31 became effective.

44. Preserving the pay of these three responding parties was not a matter raised at the consultation on April 13, 2007. I did not base the decision to grant interim relief on any way on the basis of representations about any party's stated present intentions. That is simply too speculative an exercise. The responding parties did not raise the issue as one that ought to be a condition of granting the interim relief.

45. If the individual responding parties believe that they have been removed from office without just cause, then they may file an application alleging a violation of subsection 149(2). That would be the appropriate place to consider the propriety of events occurring after April 13, 2007, and that were not part of the original application.

Disputes about the "Local 31 Membership Trust Fund"

46. Both parties have addressed the issue of who ought to be in control of the funds and who ought to be the signing officers of the various bank accounts and GIC's. I assume that they are referring to the monies that were transferred into the "Local 31 Membership Trust Fund". To the extent that assets are owned or bank accounts held by BACU Local 31, these funds are of course, at the disposal of BACU Local 31. This would apply to existing funds and new funds that are paid monthly as dues. The Supervisor is the person in control of Local 31 and has all of the authority of BACU Local 31 to dispose of the funds and assets as he deems appropriate.

47. The use of the Trust Funds is a different matter. As is evident from the orders I have made above, I have concluded that it is beyond the Board's jurisdiction to make any orders with respect to the expenditure of these monies beyond the declarations made. If the parties wish to litigate the control of that fund, it must be done elsewhere.

48. For this reason, I do not propose to say more about the control of the Trust Fund in the interim. Anything beyond the purposes of ensuring the integrity of the Board's processes is beyond the jurisdiction of the Board. I can only express the hope that the entire body of the trust is not dissipated in legal fees.

Funds in the hands of Counsel to the Responding Parties

49. The BACU alleges that certain monies have been deposited in the trust account of counsel for the responding parties. This possibility was not raised in the original consultation. Counsel certainly did not advise me of the existence of any such funds. Ownership of assets is a matter to be determined elsewhere and I make no comment on these submissions.

50. Again, I come up to the limits of the Board's jurisdiction. I would assume that money in a lawyer's trust account is impressed with a trust in favour of the rightful owner of those monies. That is not a question on which I believe the Board can pass judgment. On the other hand, the number of potential owners of the funds appears to be limited: either it belongs to BACU Local 31 (in which case the Supervisor of the local should be issuing instructions) or it belongs to the Trustees of the Trust Fund, in which case I have made no order at all. The propriety of what is done with the monies by those instructing counsel or by counsel himself is not a matter that the Board has the jurisdiction to determine, and I decline to comment.

Use of Funds for the BACU Internal Hearing Tribunal (IHT) hearing

51. Counsel for the responding parties has asked that the Board modify the April 13, 2007 order to cover the cost of counsel at various internal hearings within the BACU. These are, as I understand it, charges against certain individuals and the BACU's supervision hearing. This was a matter that could have been raised at the consultation in this matter and was not. In any event, I conclude it is beyond the jurisdiction of the Board. The IHT proceedings are internal union matters. Other than the possible review of the results of an IHT decision for "just cause" under subsection 149(1) or 149(2), the Board has no jurisdiction to supervise internal union matters. That jurisdiction belongs to the Superior Court of Justice, to the extent that it chooses to supervise the workings of a domestic tribunal. There is no proceeding before the Board under the *Labour Relations Act, 1995*, the integrity of which it is necessary to preserve. I decline to do anything with respect to this request.

Use of Funds for Judicial Review

52. This too is a matter that I decline to act on, either because the Board does not have the jurisdiction or because it would be inappropriate to do so. Any party has the right to bring an application for judicial review of any decision of the Board when it chooses to do so. The exercise of this right is not dependent on the Board's approval or sanction. My initial reaction about orders made pending the disposition of an application for judicial review (should one be brought) is that they should be sought from the Divisional Court. If such an application is brought, it is surely it is Divisional Court that will decide what is necessary to preserve its process rather than the Board.

53. Even if the Board had some jurisdiction to make such an order, it would be inappropriate to do so. If disputes were to arise about the excessive effort spent on the file, delay in perfecting an application or any other matter, the Board would be required to make a judgment about the proper conduct of a legal proceeding attacking a Board decision. The Board is not the body to be making that decision.

Conclusion

54. These additional matters point out the need to determine the main application as soon as possible. An order concerning that application has been made in a separate decision setting this matter down for a consultation on June 14 and 15, 2007.

0567-07-U Construction Labour Relations Association of Ontario; Sealant and Waterproofing Association; Industrial Contractors Association of Canada, Applicants v. Concrete Floor Contractors Association of Ontario; **Ontario Masonry Contractors Association**; Labourers' Employee Bargaining Agency, Responding Parties

Collective Bargaining – Construction Industry – Duty to Bargain in Good Faith – Intervenors – Parties – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL breached s. 17 of the Act – The applicants allege that LEBA and the two other constituent members, by entering into agreements extending the

scope of their appendices and subcontracting provisions, have forced a recognition issue to impasse, since PEBAL cannot adopt an agreement entered into by some members that has a direct negative impact on its other members – The Board found that just as there is no duty to bargain in good faith owed to employees, there is no duty owed to the constituent members of PEBAL – The Board further noted that while it is charged with determining the applications or complaints that are filed with it, the Board must be satisfied the applicants do not just have an interest in the matter, but have the legal right to proceed with the complaint – Here the Board found since there is no duty on LEBA to bargain in good faith with the constituent members of PEBAL, the applicants do not have the legal right to assert that LEBA violated the duty to bargain in good faith owed to PEBAL – Finally the Board characterized this matter as one of a complaint about the manner in which two of the five constituent members of PEBAL have dealt with the other three members (and how LEBA has taken advantage of this schism), and not as one encompassed by s. 17 of the Act – Application dismissed

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Joe Liberman, Walter Thornton, Joe Keyes, Ron Martin, Tom Dool and Brian Foote* for Construction Labour Relations Association of Ontario; *Stephen McArthur, Joe Keyes, Ron Martin, Tom Dool and Brian Foote* for Sealant and Waterproofing Association; no one appearing for Industrial Contractors Association of Ontario; *S.B.D. Wahl and Patrick Little* for Labourers' Employee Bargaining Agency; *Michael Horvat and Geoff Kinney* for Concrete Floor Contractors Association of Ontario; *Charles Hurdon, John Blair and Vello Medri* for Ontario Masonry Contractors Association;

DECISION OF THE BOARD; June 5, 2007

1. The Board, in its decision dated May 30, 2007 in this complaint under section 96 of the *Labour Relations Act, 1995*, c. 1, as am., (the "Act") alleging the responding parties contravened the obligation to bargain in good faith imposed by section 17 of the Act, noted that the Board would first deal with the parties' submissions with respect to the motion by the Labourers' Employee Bargaining Agency ("LEBA") to dismiss this application on the grounds that the applicants do not have standing under the Act to bring this application.

2. The three applicants are constituent members of the Provincial Employer Bargaining Agency Labourers ("PEBAL"). Two of the three responding parties (the Ontario Masonry Contractors Association ("OMCA") and the Concrete Floor Contractors Association of Ontario ("CFCA")) are the only other constituent members of PEBAL. The Labourers Employee Bargaining Agency ("LEBA") is PEBAL's counterpart in bargaining.

3. PEBAL and LEBA are the parties to the Labourers' provincial collective agreement pursuant to section 162(1) of the Act and the designation orders issued by the Minister of Labour under section 153(1)(a) in the case of LEBA and 153(1)(b) in the case of PEBAL.

4. Briefly, the complaint alleges that LEBA, together with the other two responding parties, violated the duty to bargain in good faith when they purported to agree to expand the scope of the recognition provisions of their appendices and sweep in employers that had not

previously been bound by those two trade appendices knowing that such an amendment would not be acceptable to PEBAL, would never be ratified by PEBAL and would lead to an impasse in bargaining. The applicants assert that PEBAL is deadlocked and that the responding parties, including LEBA, knew that maintaining those positions in bargaining would lead to the impasse within PEBAL and therefore an impasse in bargaining with LEBA. They say bargaining the scope of the union's recognition to an impasse is clearly illegal and a violation of the duty to bargain in good faith.

5. LEBA disagrees with the applicants' characterization of the events. It contends that the applicants, and in particular, the Construction Labour Relations Association of Ontario, have created the impasse by refusing to bargain with LEBA until these alleged recognition issues are dealt with to their satisfaction and have refused to table a monetary proposal. The impasse, LEBA asserts, has nothing to do with it but rather is an internal PEBAL problem.

6. LEBA submits the applicants do not have standing under the Act to even bring this complaint. It argues the duty to bargain in good faith as established by section 17 of the Act is a reciprocal duty owed by the actual parties engaged in bargaining the collective agreement. Section 17 of the Act provides:

The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

The reference to "the parties" in section 17 means the employer and trade union that are to bargain a collective agreement. Section 1(1) of the Act defines "collective agreement" as

"an agreement in writing between an employer or an employers' organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers' organization, on the other hand...and includes a provincial agreement...."

Section 162(1) clearly establishes it is the employer and employee bargaining agencies that must make the collective agreement for the provincial units they each represent. Thus, the duty to bargain in good faith is owed by LEBA to PEBAL, and not to the constituent members of PEBAL. LEBA contends the applicants' complaint that it has violated its duty to bargain in good faith is a matter for PEBAL, the only entity to which the duty is owed. Since LEBA does not owe any duty to bargain in good faith with the constituent members of PEBAL, LEBA says those constituent members have no basis for complaining about a violation of the duty.

7. LEBA referred to *Grand Valley Construction Association*, [1988] OLRB Rep. June 593 in which the Board dismissed a complaint filed by an employers' association alleging that the employer bargaining agency had violated its duty of fair representation owed to the employers it represents. In dismissing the complaint, the Board noted at page 596 that the duty under section 151(2), now 167(2), was owed to employers and not to an employers' association. It then stated:

We are therefore persuaded that this complaint must be dismissed as it does not set out a violation of the *Labour Relations Act* in respect of any of the complainants.

In that case, because the alleged violations of the Act were not *in respect of* the complainants, the Board dismissed the complaint.

8. A similar result obtained in *International Union of Bricklayers and Allied Craftsmen*, unreported, Board File Nos. 1645-98-U, 1768-98-U, decision dated February 19, 1999, Q.L. cite [1999] OLRD No. 1492 where the Board, at paragraph 11, wrote:

The Board in *Canadian General Electric*, [1980] OLRB Rep. Aug. 1179 held that individual employees who objected to the pension provisions that had been negotiated with their employer by their trade union did not have status to bring a complaint against their union alleging a violation of the duty to bargain in good faith. The Board commented upon the structure of the Act and the roles of the various participants in collective bargaining. After referring to the duty to bargain in good faith in what is now section 17, the Board stated at page 1189-90:

...the scheme of the Act reflected in many other provisions, make it clear that the parties to a collective agreement are the employer and the trade union, although the employees in the defined bargaining unit are undoubtedly bound by the agreement.

That analysis applies equally to bargaining in respect of the ICI sector of the construction industry where the parties to the bargaining are the designated or accredited employer bargaining agency on the one hand and the designated or, as in this case, the certified employee bargaining agency on the other.

The Board in dismissing the application on the grounds that the applicants did not have standing to bring a bargaining in bad faith complaint wrote at paragraph 13:

The applicants do not, as local unions and affiliated bargaining agents represented by the certified employee bargaining agency, have the status to assert that the responding party violated section 17 of the Act.

See also *K-Mart Distribution Centre*, [1981] OLRB Rep. Oct. 1421.

9. The Board in *Sean McKenny*, unreported, Board File No. 3191-01-U, decision dated April 3, 2002, Q.L. cite [2002] O.L.R.D No. 1042 dismissed an application alleging a violation of sections 147 and 149 of the Act when it held the applicant, as an individual union member, did not have standing to complain about how his local union was dealt with by its parent.

10. The applicants accept that LEBA owes its duty to bargain in good faith under section 17 of the Act to PEBAL and not to the individual constituent members of PEBAL. The applicants emphasize that the responding parties, including LEBA, have taken a recognition provision to impasse, knowing that such a provision would not be accepted by PEBAL. The applicants contend there is an impasse over the changes to the scope of recognition in the two appendices for which OMCA and CFCA are responsible. They say LEBA and those two

constituent members of PEBAL bargained changes to the scope and recognition provisions of their appendices knowing that those changes would not be adopted by PEBAL, thereby leading to a deadlock within PEBAL and an impasse in bargaining. The applicants contend that LEBA, as a party to the bargaining of a recognition provision to impasse violated section 17 of the Act.

11. The applicants submit they are directly and adversely affected by the bargaining in bad faith conducted by LEBA. They accept the duty to bargain in good faith exists between PEBAL and LEBA. They also allege PEBAL has been injured by the conduct of LEBA, and because the OMCA and CFCA are acting together with LEBA to obtain those illegal changes, PEBAL is unable to act against LEBA in its own name. There is, in effect, a deadlock at PEBAL. PEBAL cannot initiate an unfair labour practice complaint about the harm being done by LEBA to the applicants by its bargaining for an illegal expansion of its bargaining rights. Yet, the applicants are directly affected by the illegal conduct and therefore should be entitled to proceed with this complaint.

12. The applicants contend section 96 of the Act does permit them to bring this application. Section 96 does not in any way restrict who or what may bring a complaint alleging a contravention of the Act. The applicants accept that the Board has a very broad discretion in determining whether to proceed with or dismiss a complaint. The applicants referred to *Brant Haldimand-Norfolk Catholic School Board*, [2001] OLRB Rep. Mar./Apr. 292 in which the Board at page 301 wrote:

Under section 96(1) of the *Labour Relations Act*, the Labour Relations Board has a discretion whether or not to inquire into any application or complaint (see generally *Dhanota v. UAW Local 1285 and Sheller Globe of Canada Ltd.*, (1983), 83 CLLC ¶ 14,052 (Ontario Div. Ct.)). The fact that a complaint is filed, does not mean that the Board is obliged to enquire into it. Rather, the Legislature has given the Board a *discretion* in this regard; and in the exercise of that discretion, the Board looks at such factors as: any delay in filing the complaint; whether the case makes out an arguable case for a breach of the provisions of the *Act* relied upon by the complainant; the likelihood of success; the nature and utility of any remedy that might flow; the cost implications for the parties and the public; whether, overall, some statutory or labour relations purpose would be served by the litigation exercise; and so on. It is important for the Board to expend its limited resources in a manner that is consistent with the objects of the statute (see section 2 of the Act), and that is sensitive to labour relations realities.

The applicants submit the circumstances of this case cry out for intervention where a designated employer bargaining agency cannot itself challenge the improper bargaining behaviour of its counterpart employee bargaining agency because two of its five constituent members have, together with the employee bargaining agency, introduced illegal amendments to the collective agreement.

13. I accept that section 96 of the Act is very broad in its scope. It provides that "the Board may inquire into the complaint of a contravention of this Act" without establishing or

prescribing the characteristics the party launching the complaint must have. In that way, section 96 may be compared to sections 100 or 101 where only a union, council of unions, employer or employers' organization may file a complaint about an unlawful strike or unlawful lockout, or section 133 where only a party to the collective agreement may refer a grievance to the Board for determination, or section 144 where only an "interested person, trade union, council of trade unions or employers' organization" may file a complaint about an unlawful strike or unlawful lockout in respect of the construction industry. Nevertheless, the Board has always required the entity making the unfair labour practice complaint assert that its rights under the Act have been infringed.

14. The Board's approach to the exercise of its discretion under section 96 of the Act discussed in *Brant Haldimand-Norfolk Catholic School Board, supra* assumed the complainant was directly affected by the conduct alleged in the complaint. The Board in that case was asked to dismiss the complaint due to changed circumstances that had occurred between the filing of the complaint and the subsequent negotiations leading to the withdrawal of the complaint against a number of the parties.

15. LEBA pointed out that the applicants could not provide the Board with a single case in which an applicant under a section 96 complaint was not an entity directly affected by the alleged violation. There were, however, a number of decisions in which the Board made it clear that in order to proceed with an unfair labour practice complaint, the applicant had to demonstrate the alleged violation of the Act impinged on its rights under the Act. Where the applicant could not do so, the Board found the applicant did not have standing to bring the complaint and it was dismissed.

16. The following comment made by the Board in *Sean McKenny, supra*, at paragraph 3 sets out that principle succinctly:

In order to bring an application alleging a violation of either of these sections, the applicant must plead facts which establish that he is a person whom the section was designed to protect. It is a well-established principle of law that a party may not rely on the rights of another as the basis of his or her claim.

While the Board was discussing sections 147 and 149 of the Act in *Sean McKenny*, it seems to me that same rationale had been used by the Board in *Canadian General Electric, supra* and *K-Mart Distribution Centre, supra*, among others, to find that although employees in the bargaining unit are affected by the collective agreement settled between their trade union and their employer, those employees do not have standing to assert that there has been a violation of the duty to bargain in good faith because that duty is owed by the employer to the union and by the union to the employer. There is no duty to bargain in good faith that is owed to employees. Similarly, there is no duty to bargain in good faith owed to the constituent members of PEBAL.

17. The Board is charged with determining the applications or complaints that are filed with it. The Board does not have an investigatory or supervisory jurisdiction over labour relations generally. Rather it is limited to dealing with the matters that are properly before it. The Board does not proceed with complaints or applications unless the party bringing the complaint or application has the right to do so. While an applicant's right to bring an application can be clear in many cases and is not challenged, where the right to bring the complaint is

challenged, the Board must be satisfied the applicant does not just have an interest in the matter, but has the legal right to proceed with the complaint because its rights under the Act have been adversely affected by the party or parties named in the complaint.

18. In *Thyssen Elevators Ltd.*, unreported, Board File No. 2087-01-U, decision dated January 15, 2002, Q.L. cite [2002] OLRD No. 161, the Board, in permitting Thyssen Elevators to intervene in a bargaining in bad faith complaint filed by the employer bargaining agency, made the following comments at paragraph 6:

All parties agree that the test of whether a party is entitled to intervenor status is whether the party can demonstrate a direct and legal interest in the proceeding, as opposed to a commercial or incidental one.... This is particularly difficult to demonstrate in a bad faith bargaining complaint. In such complaints even employees in the bargaining unit are denied status on the ground that section 17 contains a duty owed only to the trade union, even though employees will be affected by any collective agreement ultimately signed....

In that case Thyssen was permitted to intervene since the remedy sought by the complainants in that case would have had a direct affect on the collective agreement by which it was bound.

19. Whether a party has a sufficient legal interest to obtain standing to intervene is not, in my view, the same as having a legal right to initiate a proceeding. The difference between the two may be significant. It is sufficient, in this case, to note the concession by the applicants that the duty to bargain in good faith arises in the relationship between PEBAL and LEBA. There is no duty on LEBA to bargain in good faith with the constituent members of PEBAL. Therefore, in the absence of a legal duty owed to the applicants, the applicants do not have the legal right to assert that LEBA violated the duty to bargain in good faith it owed to PEBAL. In effect, the applicants are attempting to rely on the rights of PEBAL to assert that LEBA has violated the duty to bargain in good faith.

20. It is apparent a very serious situation has developed within PEBAL that has affected its ability to carry out effective collective bargaining with LEBA. While I recognize that the differences between the constituent members of PEBAL have created significant difficulties for PEBAL, the Board is not in any position to remedy those difficulties in an application that alleges a violation of the duty to bargain in good faith. As the Board noted in *Sarnia Construction Association*, [2004] OLRB Mar./Apr. 407 at 442, the Minister designated the employer bargaining agencies and their constituent members. The Board may not have the jurisdiction to order changes in light of sections 153(4) and 153(5) of the Act.

21. Whether the conduct of LEBA and the other two responding parties might have violated section 71 of the Act (interference with the administration of an employers' organization) was not raised and therefore was not considered by me in determining the applicants' standing to initiate this complaint.

22. Although the applicants framed this complaint as a violation of the duty to bargain in good faith, it is, it seems to me, more of a complaint about the manner in which two of the five constituent members of PEBAL have dealt with the other three members of PEBAL and with LEBA. It is also about LEBA taking the benefit of the schism that developed within PEBAL. In

the final analysis, those are not matters encompassed by section 17 of the Act. Whether they are legal matters the Board or the courts can address or are political matters or are matters that get sorted out at the bargaining table remains to be determined.

23. In the result, as the applicants are not owed the duty to bargain in good faith imposed by section 17 of the Act on LEBA, and as PEBAL is not a party seeking relief in this complaint, the applicants do not have standing to bring this complaint.

24. Therefore this application under section 96 of the Act must be dismissed.

0907-07-U Construction Labour Relations Association of Ontario; Sealant and Waterproofing Association; Industrial Contractors Association of Canada, Applicants v. Concrete Floor Contractors Association of Ontario; **Ontario Masonry Contractors Association**; Labourers' Employee Bargaining Agency, Responding Parties

Collective Bargaining – Construction Industry – Interference with employers' organization – Intervenors – Parties – Unfair Labour Practice – Three of five constituent member associations of PEBAL filed a complaint alleging the LEBA together with the other two constituent members of PEBAL interfered in the administration of the employers' organization contrary to s. 71 of the Act – The Board ruled on four preliminary motions raised by the responding parties – First, the Board found that the members of the employers' organization had a direct legal interest in having their organization operate without interference by a trade union and accordingly had standing – Second, the Board declined to determine whether the applicants had pled a *prima facie* case and dismissed the responding parties' motion to dismiss – Third the Board declined to exercise its discretion to refuse to entertain the complaint – Finally, the Board found merit in the responding parties' submissions seeking to defer the matter pending the outcome of an Industrial Inquiry Commission, given that through its mandate the Commission would provide a much better forum for discussing the parties' differences – Adjourned pending release of Commission's report

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Joseph Liberman, Walter Thornton and Joe Keyes* for the applicants; *S.B.D. Wahl, D. Randazzo and Patrick Little* for Labourers' Employee Bargaining Agency; *Michael Horvat and Geoff Kinney* for Concrete Floor Contractors Association of Ontario; *David Bannon, John Blair, Martin Deeley and Vello Medri* for Ontario Masonry Contractors Association;

DECISION OF THE BOARD; June 14, 2007

1. The employees represented by the affiliated bargaining agents of the Labourers' Employee Bargaining Agency ("LEBA") who had been working in the industrial, commercial and institutional sector of the construction industry under the provincial collective agreement between LEBA and the Provincial Employer Bargaining Agency Labourers ("PEBAL") have been engaged in a legal strike since Monday morning, June 4, 2007. According to counsel for LEBA, that strike has started and is continuing without PEBAL having presented a monetary

proposal to LEBA. While the ongoing strike is not directly related to the legal issues raised by this application under section 96 of the *Labour Relations Act, 1995*, c 1, as am. (the "Act") alleging a violation of section 71, it does provide some context for understanding the nature of this application.

2. The applicants are three of the five constituent members of PEBAL, the designated employer bargaining agency for employers of labourers for whom affiliated bargaining agents of LEBA hold bargaining rights. LEBA is the counterpart of PEBAL and is the designated employee bargaining agency for labourers. The two employer association responding parties; the Concrete Floor Contractors Association ("CFCA") and the Ontario Masonry Contractors Association ("OMCA") are the other two constituent members of PEBAL. The applicants allege the responding parties violated section 71 of the Act through the negotiation and settlement of the trade appendices for which CFCA and OMCA are responsible that have created an impasse within PEBAL and in the bargaining between PEBAL and LEBA.

3. Section 71 of the Act provides:

No trade union and no person acting on behalf of a trade union shall participate in or interfere with the formation or administration of an employers' organization or contribute financial or other support to an employers' organization.

The applicants' case is that LEBA together with CFCA and OMCA entered into the memoranda of agreement knowing that such memoranda would result in a deadlock within PEBAL and thereby interfere in its administration—that is, its ability to carry on collective bargaining. That ongoing province wide strike by labourers employed in the industrial, commercial and institutional sector of the construction industry is due, at least in part, by the inability of PEBAL to carry on collective bargaining.

4. This matter was scheduled for a hearing or consultation before this panel of the Board for Tuesday June 12, 2007. While the applicants submitted the matter should proceed as a consultation, the responding parties contended that the application, which raised suggestions of conspiracy between the two constituent members of PEBAL and LEBA, made a number of factual assertions vehemently disputed by the responding parties and would require hearing evidence from witnesses to ascertain the real facts. The responding parties also raised a number of procedural or preliminary matters that had to be dealt with before moving to the merits of the application. Following an outline of the parties' positions, I indicated that whether this matter ultimately proceeds by way of a consultation or a hearing need not be decided before dealing with the preliminary issues raised by the responding parties.

5. Counsel for OMCA, by letter filed with the Board on June 11, 2007 advised the Board of a news release issued by the Ministry of Labour earlier that day. According to the news release, the Minister of Labour appointed an Industrial Inquiry Commission pursuant to section 37 of the Act "to facilitate a resolution in the dispute involving the Labourers' International Union of North America (LIUNA) and the Provincial Employer Bargaining Agency-Labourers." In that letter counsel in that letter submitted the Board should cancel the June 12th hearing. I was advised by the parties when this matter convened before me that the Industrial Inquiry Commissioner would be meeting with the parties on Wednesday and Thursday this week.

6. The responding parties advised they had four distinct but related preliminary motions to argue before me with a view to having this application either dismissed or held in abeyance. They asserted the applicants did not have standing to bring this application, the application did not allege a *prima facie* case of a violation of the Act, the Board should exercise its discretion under section 96 to refuse to hear the application because there would be no useful labour relations purpose in doing so and in the alternative, defer further consideration of the matter pending the parties' attempts to reach a resolution of the dispute before the Industrial Inquiry Commission.

Standing of the Applicants

7. The responding parties submitted only the employers' organization that has standing to make an application alleging a violation of section 71 of the Act is the organization that is the subject of the interference, which in this case is PEBAL. Section 71 prohibits a trade union from interfering with the administration of an employers' organization. The responding parties submit the analysis used by this panel of the Board when it found that the applicants did not have standing to bring a complaint against LEBA alleging a violation of the duty to bargain in good faith applies equally to an alleged violation of section 71. They say section 71 protects the right of the employers' organization to carry on its affairs without interference by a trade union. Since it is the organization's rights that are being adversely affected by the alleged violation of section 71, it is the organization itself that has standing to bring such a complaint, not the members of the organization.

8. The Board, at paragraphs 15 and 16 of its June 5th decision between these parties, (*Ontario Masonry Contractors Association*, Board File No. 0567-07-U, decision dated June 5, 2007) summarized the principles the Board had developed when dealing with standing of a party to bring a complaint in the following way:

15. ... There were, however, a number of decisions in which the Board made it clear that in order to proceed with an unfair labour practice complaint, the applicant had to demonstrate the alleged violation of the Act impinged on its rights under the Act. Where the applicant could not do so, the Board found the applicant did not have standing to bring the complaint and it was dismissed.

16. The following comment made by the Board in *Sean McKenny, supra*, at paragraph 3 sets out that principle succinctly:

In order to bring an application alleging a violation of either of these sections, the applicant must plead facts which establish that he is a person whom the section was designed to protect. It is a well-established principle of law that a party may not rely on the rights of another as the basis of his or her claim.

While the Board was discussing sections 147 and 149 of the Act in *Sean McKenny*, it seems to me that same rationale had been used by the Board in *Canadian General Electric, supra* and *K-Mart Distribution Centre, supra*, among others, to find that although employees in the bargaining unit are affected by the collective agreement settled between their trade union and their employer, those employees do not have standing to assert that there has been a violation of the duty to bargain in good faith because that duty is

owed by the employer to the union and by the union to the employer. There is no duty to bargain in good faith that is owed to employees. Similarly, there is no duty to bargain in good faith owed to the constituent members of PEBAL.

9. While I obviously accept that an applicant cannot rely on the rights of another as the basis for the claim being asserted, there is, in my view, a significant difference between an employee purporting file a bargaining in bad faith complaint and the circumstances before me in this case. Where an employers' organization is the subject of interference in its administration, the more successful the interference the less likely it is the organization will be in a position to assert a complaint about the interference. In my view, section 71 protects the rights of not just the employers' organization itself, but also protects the rights of the members of the organization to participate in an organization that has not been undermined through interference by a trade union or persons acting on behalf of a trade union.

10. Section 6 of the Act provides:

Every person is free to join an employers' organization of the person's own choice and to participate in its lawful activities.

That freedom, in my view, is protected by both section 71 and section 76 of the Act which provides:

No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act. [emphasis added]

I note parenthetically that section 76 has no bearing on this proceeding.

11. The members of an employers' organization have a direct legal interest in having their organization operate without interference by a trade union. That situation is quite different, in my view, from an employee in a bargaining unit challenging the manner in which the bargaining agent was dealt with in bargaining. An employee in a bargaining unit has no direct relationship with the collective bargaining that takes place between the union that represents that employee and the employer that employs that employee. An employee alleging bargaining in bad faith is not a party to the bargaining. The employee has, at best, a third party relationship to the bargaining process. A member of an employers' organization however, is in quite a different situation. The employer has a direct relationship with the employers' organization by virtue of being a member of that organization. The member that files a complaint under section 71 takes issue with the administration of the organization by alleging interference with that administration. That member's complaint does not arise from the activity undertaken by the organization unlike the situation where the employee's complaint about bargaining relates to the bargaining activity of the trade union.

12. The responding parties' motion to dismiss the complaint on the grounds that the applicants do not have standing to bring the complaint is dismissed.

Motions to Dismiss

13. The responding parties sought to have this complaint dismissed by the Board exercising its discretion under section 96 of the Act because, according to the responding parties, no useful labour relations purpose would be served by proceeding with the complaint in the circumstances in which this complaint arises. LEBA contended the Board examines a number of factors when determining whether to exercise the discretion found in section 96 of the Act to refuse to entertain a complaint. According to LEBA, those factors include whether the applicant has established an arguable case or whether there is any likelihood of success, the nature and utility of the remedies sought, whether some labour relations purpose would be served by the litigation, or to put it another way, whether continuing with the litigation would not serve any labour relations purpose, the costs to the parties and the use of the Board's limited resources on a complaint that did not advance the interests of applicant.

14. The Board in *Brant Haldimand-Norfolk Catholic District School Board*, [2001] OLRB Rep. Mar./Apr. 292 (March 26, 2001) discussed the manner in which it might exercise its discretion to refuse to inquire further into a complaint made under section 96 of the Act when it wrote at page 301:

The fact that a complaint is filed, does not mean that the Board is obliged to enquire into it. Rather, the Legislature has given the Board a *discretion* in this regard; and in the exercise of that discretion, the Board looks at such factors as: any delay in filing the complaint; whether the case makes out an arguable case for a breach of the provisions of the *Act* relied upon by the complainant; the likelihood of success; the nature and utility of any remedy that might flow; the cost implications for the parties and the public; whether, overall, some statutory or labour relations purpose would be served by the litigation exercise; and so on. It is important for the Board to expend its limited resources in a manner that is consistent with the objects of the statute (see section 2 of the Act), and that is sensitive to labour relations realities.

LEBA contends that applying those factors to this case warrants the Board exercising its discretion under section 96 of the Act to dismiss this complaint at this stage by refusing to inquire further into it.

15. LEBA pointed out that permitting this litigation to continue in the circumstances before the Board distracts the parties from what their focus should be, that is resolving the disputes between and among them so that a new provincial ICI collective agreement applicable to construction labourers can be settled and the legal strike by construction labourers ended.

16. LEBA referred to *Orenda Aerospace Corporation*, [1996] OLRB Rep. May/June 478 in which the Board dismissed a trade union's application under section 96 of the Act because the Board considered it appropriate to exercise its discretion not to inquire further into the complaint. The Board explained its decision at page 479 in the following terms:

...it appeared to the Board that even if the applicant had made out an arguable case, and even if the relief the trade union sought was arguably appropriate, something which was far from clear, litigating the matter would do nothing to further either the collective bargaining in which the parties are engaged, or their labour relations in general. On the contrary, it appeared

more likely that litigating the complaint would only get in the way of collective bargaining. At the very least, it would have caused further delay in that respect and inhibited useful collective bargaining in circumstances in which everyone agreed the bargaining table is where the parties should be. The Board considered it inappropriate to inject itself into collective bargaining between the parties, which would have been the effect of allowing this complaint to proceed. Accordingly, the Board exercises its discretion not to do so as aforesaid.

LEBA submitted those same type of circumstances are present in this proceeding.

17. See also *Universal Workers Union, Labourers' International Union of North America, Local 183*, [2001] OLRB Rep. July/August 1103 (July 23, 2001) where the Board wrote at page 1104:

7. It is possible that the statements attributed to Mr. Hanecak might be found to be a violation of the Act. However, this result is at best arguable.

8. On this basis, the Board would not dismiss the application under Rule 46. However, there is a second and more significant consideration. Section 96 is a discretionary section. The Board always retains the discretion not to inquire into a complaint if there is no labour relations purpose in doing so: see, for example, *William A. Curtis*, [1993] OLRB Rep. Dec. at paragraph 30 and *Dev Jehodh*, [1997] OLRB Rep. April 236 at p. 239.

The Board did not dismiss the application on the basis that the applicant had failed to establish a *prima facie* case, but rather dismissed it on the grounds that no labour relations purpose would be served by proceeding with it. The Board reviewed the relief sought by the applicant, and after setting it out, commented at page 1105:

This relief appears to be little more than a request for a modern version of the eighteenth century punishment of a public flogging. Neither the hearing of this application nor the granting of such relief would serve any labour relations purpose.

18. LEBA also submitted that the application fails to establish a *prima facie* case of a violation of the Act. It submits that section 71 of the Act, unlike section 70, does not prohibit a trade union from interfering in the representation of an employer by an employers' organization. LEBA contends the essence of this complaint is that the bargaining and settlements reached with the two associations impaired PEBAL's ability to represent the interests of general contractors, the principal constituency represented by the Construction Labour Relations Association of Ontario ("CLARO"). LEBA, joined by both OMCA and CFCA, submitted this complaint arises because OMCA and CFCA reached agreements with LEBA that inure to the benefit of both the contractors they represent and the employees represented by LEBA but which, at the same time, according to CLARO, have a negative impact on the employers and employer associations represented by CLARO, that is, local construction associations and general contractors, many of whom are not in a collective bargaining relationship with any affiliated bargaining agents of LEBA.

19. The responding parties argue that the complaint is dressed up as interfering with the administration of PEBAL, but it has nothing to do with PEBAL's ability to bargain with LEBA and everything to do with LEBA and the two trade associations reaching agreements that are not acceptable to the general contractors CLARO represents. They submit that section 71 does not prohibit a trade union from acting in its own self interest even if the result adversely affects the ability of the employers' organization to represent some employers. In *Masonry Contractors Association of Toronto*, [1996] OLRB Rep. Nov./Dec. 952 the Board commented on the difference between section 70 and section 71 of the Act when it wrote at pages 960-61:

42. Doing so may well be unlawful, but not because it interferes with the administration of a trade union. Rather, it may tend to undermine the trade union and interfere with the representation of employees by the trade union, which is prohibited by section 70 of the Act.

43. This highlights a significant difference between section 70 and section 71. Section 70 prohibits employers from interfering in the formation, selection or administration of a trade union, *or with the representation of employees by a trade union*. Section 71 does not contain the latter prohibition. This difference must mean something, and what it means is that it is only when a trade union interferes in the formation or administration of an employer's organization, or improperly offers support to an employer's organization that its conduct runs afoul of section 71.

20. The responding parties contend the deadlock within PEBAL is attributable to the refusal of CLARO and the two other applicants who are constituent members of PEBAL to continue to bargain with LEBA. They say nothing they have done has interfered with PEBAL or any of its constituent members.

21. The responding parties, as an element of their argument, also suggest the establishment of the industrial inquiry commission with a mandate "to facilitate a resolution in the dispute" is the forum for dealing with the concerns the applicants have with the changes made to their two trade appendices. They say that if the Board is not prepared to dismiss this complaint as a matter of discretion or for failing to establish a *prima facie* case, then this matter should be adjourned pending the outcome of the Industrial Inquiry Commission.

22. The applicants vigorously disagree with the submissions made by LEBA and the other responding parties. They submit it is clear they have pleaded a *prima facie* case for a violation of section 71 of the Act. Not only did LEBA, and the two other responding parties on behalf of LEBA interfere with PEBAL, they also interfered with the administration of CLARO and the other two applicants, counsel submits.

23. The applicants' pleading at paragraphs 12 and 14, in relation to the CFCA and at paragraphs 20 and 23, in relation to OMCA, provide the outline of the allegations the applicants say constitute a violation of the Act. The documents filed with the application set out the documentary evidence and factual particulars in support of those allegations. In brief, the applicants allege CFCA agreed to extend the scope of its trade appendix to encompass all employers, regardless of whether they are concrete floor finishing contractors or otherwise, who perform or are engaged in concrete or cement finishing work. The applicants submit that extension of recognition cannot be determined by the trade association except with the approval of PEBAL, and by both requesting and obtaining that type of expansion of its bargaining rights,

LEBA, knowing that PEBAL could not accept such an amendment and that maintaining that position would create a deadlock within PEBAL, interfered with the administration of PEBAL. Similarly, OMCA has agreed to amend its recognition clause to describe mason tenders as including persons who tend not only bricklayers and stonemasons, but also "plasterers, marble, tile, terrazzo, cement masons, resilient floor layers and their helpers." The applicants contend that type of amendment expands the bargaining rights of LEBA, and deliberately confuses work jurisdiction with bargaining rights.

24. The applicants contend the amendments obtained by LEBA in respect of the OMCA trade appendix go well beyond the labourers' designation and deliberately take the language from the bricklayers' designation and imports it into the collective agreement. The applicants argue that the changes proposed affect their ability to represent their members. Those changes were proposed and accepted by LEBA with the knowledge that PEBAL would not ratify those changes and would be deadlocked as a result of OMCA and CFCA agreeing to them while the other members of PEBAL would not.

25. The applicants accept that OMCA and CFCA can make changes to their recognition provisions so long as those changes do not have an impact on the other employers represented by PEBAL. But the changes obtained by LEBA with the acquiescence of OMCA and CFCA, the applicants submit, do have a broader reach and purport to bind employers who had not been previously subject to those two trade appendices.

26. The applicants submit there is a significant labour relations issue at stake in these proceedings. They assert the Board must regulate participants in the bargaining process that purport to extend recognition at the request of the trade union with which they are bargaining.

27. In the proceedings before me, LEBA submits that it has acted in its own self-interest by seeking to provide work opportunities for the employees it represents. OMCA and CFCA argue that they have moved to "level the playing field" by agreeing with the proposals from LEBA, rather than acting on behalf of LEBA to interfere with the administration of PEBAL.

28. In determining whether an application makes out a *prima facie* case for the relief sought in the application, the Board relies on the facts and allegations set out in the application. That principle is well established. See, for example, *Brick and Allied Craft Union of Canada*, [2000] OLRB Rep. Sept./Oct. 796 where the Board wrote at page 797:

...the responding parties must persuade the Board that there is no reasonable likelihood that the applicants can establish a violation of the Act based on the allegations they have made in their application.

The Board in making that assessment does not consider the explanations or defences the responding parties may have for the conduct that appears to be contrary to the Act. See *Kingston, Frontenac, Lennox and Addington Community Care Access Centre*, [2002] OLRB Rep. Sept./Oct. 863 in which the Board wrote at page 864:

In making a determination as to whether an applicant has pleaded a *prima facie* case the Board may consider only the materials filed by the applicant and any facts agreed upon by the parties. The Board assumes, for purposes

of the preliminary motion, that the facts alleged in the application are true and provable.

29. When the Board is dealing with a motion to dismiss an application for failing to establish a *prima facie* case, the Board is acting under Rule 39 of the Board's Rules of Procedure. Rule 39 provides:

Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all of the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing or consultation. In its decision, the Board will set out its reasons.

Rule 39, and its predecessors, have been in the Board's Rules for more than thirty years. Under Rule 39 and its predecessors, the Board retained the discretion to refuse to determine whether an application had established a *prima facie* case, depending on the nature of the application and the allegations set out in it.

30. The Board in *International Association of Bridge, Structural and Ornamental Ironworkers*, [1982] OLRB Rep. Feb. 233 dealt with a motion by the responding parties under section 71(1) of the Board's Rules (virtually identical to the current Rule 39) to dismiss the complaint without a hearing. The Board, in refusing to do so, made the following comments at page 234:

Although counsel for the respondents contended that the Board has a duty to dismiss a complaint which does not make out a *prima facie* case, section 71(1) clearly provides the Board with a discretion. In some circumstances, it is eminently appropriate for the Board to exercise its discretion under that provision to dismiss a complaint where it is apparent that no useful purpose would be served in listing the complaint for hearing since the facts as alleged could not support an argument that a violation of the Act had occurred (see, for example, *Heist Industrial Services*, 63 CLLC ¶ 16,263; *Patternmakers Association of Hamilton and Vicinity*, [1970] OLRB Rep. Sept. 688; *Ernest D'Andrea*, [1975] OLRB Rep. Aug. 646; *Local 1285 United Automobile Aerospace & Agricultural Workers Union of America*, [1975] OLRB Rep. Apr. 387; *Masonry Contractors' Association (Toronto-Incorporated)*, [1970] OLRB Rep. Dec. 1124 and *Woodall Construction Company Limited*, [1979] OLRB Rep. June 597). However, where as in the present proceedings, the complaint raises subtle questions of fact that are largely dependent upon the inferences that may properly be drawn from circumstances and events that occurred over a relatively lengthy period of time, combined with important and relatively complex issues of labour relations law and policy, the Board is of the view that it is not appropriate to dismiss the matter pursuant to section 71(1) without a full hearing on the merits. Accordingly, the respondents' motion to dismiss this complaint without a hearing pursuant to section 71(1) of the Rules is hereby dismissed.

Some of those same considerations apply to this application. I am not prepared to find that the applicants have established a *prima facie* case and dismiss the responding parties' motion on that ground. It is, at best, arguable, that the applicants have pleaded allegations that would, looked at

on their own and without considering the positions put forward by the responding parties, establish a violation of section 71 of the Act.

31. The applicants have made certain allegations against LEBA and the other responding parties that, on the basis of their submissions and their pleadings, seem capable of being satisfactorily explained. Indeed, when counsel for LEBA suggested somewhat rhetorically that it would be astounding to find a trade union had violated the Act by attempting to secure work opportunities for its members through collective bargaining, it appeared that LEBA could have a defence to the applicants' allegations, yet in assessing whether a *prima facie* case is made out by the application, I cannot have regard to those sorts of explanations or defences. There were several similar submissions made by the other responding parties with respect to the reasons for them taking the positions they did with LEBA during bargaining. Thus, I do not think it appropriate in these circumstances to engage in a detailed review of the allegations made by the applicants to determine whether they have actually established a *prima facie* case of a violation of section 71 of the Act when the issues raised in the application and the responses ought to be fully explored, whether through a consultation or hearing.

32. Therefore, in the exercise of my discretion under Rule 39 of the Board's Rules of Procedure, I decline to determine whether the applicants have established a *prima facie* case. In the result, the motion by the responding parties to dismiss this application on the grounds that the applicants have failed to establish a *prima facie* case is dismissed.

33. As noted earlier, the responding parties also sought to have the Board dismiss this application by exercising its discretion to refuse to inquire further into it. I decline to do so as the issues raised in this application, and in particular, the manner in which an employer bargaining agency can maintain a common position during bargaining with its counterpart employee bargaining agency is, in my view, a significant labour relations issue. Moreover, the allegations made by the applicants and the answers to those allegations provided by the responding parties ought to be fully explored if the parties are unable to resolve their differences through collective bargaining or otherwise. Absent a resolution, these issues will no doubt arise again in future rounds of collective bargaining. Therefore, the motion to dismiss this application on the basis of the Board exercising its discretion under section 96 of the Act to refuse to enquire into the complaint is dismissed.

Deferral to Industrial Inquiry Commission

34. The responding parties, in the alternative, moved to have the Board defer this matter pending the completion of the proceeding before the Industrial Inquiry Commission appointed by the Minister of Labour. The applicants oppose having this matter deferred. They argue that the Industrial Inquiry Commission does not have the power to make a decision on the legal issues raised in this complaint, and, according to the applicants, there are significant legal issues that must be determined and decided before any settlement can be made.

35. It appears to me there is much merit in the responding parties' submissions seeking a deferral of this matter pending the outcome of the Industrial Inquiry Commission. I accept there are legal issues raised by these applications relating, in particular, to the conduct of LEBA in respect of PEBAL. But, more importantly, there are collective bargaining and labour relations issues raised by the alleged change in recognition in respect of the CFCA trade appendix to the

provincial ICI collective agreement and the attempt to import language from another designation order together with conflating language dealing with work jurisdiction and union recognition in the OMCA trade appendix to the provincial ICI agreement. Indeed, the parties seriously disagree over whether there has in fact been any change in recognition created by the amendments to the CFCA trade appendix.

36. The responding parties contend such language issues are not something the Board can or should deal with in this type of a proceeding, but rather would come within the purview of a rights arbitrator if there were some dispute over the interpretation or application of the amended language. The applicants take a different view, but do indicate that the Board would have to review the language of the old agreement and the proposed amendments in order to determine some of the issues they have raised.

37. I am satisfied, given the mandate of the Industrial Inquiry Commission, the proceedings before that Commission would provide a much better forum for discussing the parties' differences and perhaps through those discussions, achieve a sensible and fair resolution of the issues, or at least some of them. Moreover, the Board is sensitive to the context within which this litigation is taking place. There is an ongoing legal strike affecting thousands of construction labourers across the entire province, slowing or shutting down hundreds of construction projects in the industrial, commercial and institutional sector. While I accept the applicants' contention that there are significant legal issues raised in this proceeding, this application arises from a collective bargaining dispute, and in my opinion, the resolution of that collective bargaining dispute should be the parties' focus at the present time. That is the primary objective of the Industrial Inquiry Commission in view of the statement made by the Minister of Labour when he appointed the Commission:

I am hopeful the inquiry will help the parties to resolve their differences and thereby allow workers to get back on the job and construction projects across Ontario to continue as quickly as possible.

38. Therefore, I hereby adjourn this application *sine die* pending the release of the Commission's report to the Minister pursuant to section 37 of the Act. Within 10 days from the release of the Commission's report, any party to this proceeding may request the Registrar to schedule this matter before me. If no such request is made within 10 days from the release of the Commission's report, this application will be deemed dismissed without further notice. Should this proceeding resume before me, the parties will first address whether the Board may deal with this application by way of a consultation, and if so, whether a consultation or a hearing is the more appropriate process to determine the issues in this application.

2251-06-R Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880, Applicant v. **Penske Logistics**, Responding Party

Certification – Employee – Status – The Board examined the position of “inventory clerk” or “auditor” for purposes of certification of a clerical unit of the employer’s employees – The parties had earlier agreed to alter the recognition clause of the employer’s production unit because the auditors were supervisors within the meaning of the bargaining unit description – In the current application the union sought to have the

auditors excluded either because they were supervisors or because they performed managerial functions within the meaning of s. 1(3) of the Act – The Board held that since the parties had agreed the auditors exercised supervisory functions so as to be excluded from the production unit, and there was no material change in their status prior to the instant application, they remained supervisors within the meaning of the clerical bargaining unit – Status determined

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Michael Klug* and *Dan DiGiovanni* appearing for the applicant; *Lisa S. Goodfellow*, *M. Daniel*, *Tracey Arnold* and *Naomi Horrox* appearing for the responding party.

DECISION OF THE BOARD: May 31, 2007

1. This is an application for certification under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").
2. In my previous decision of February 13, 2007 in this matter, I made a "bottom line" determination that the position of auditor or inventory clerk (for convenience, I shall use the term, auditor) was not in the agreed bargaining unit, and that, consequently, the ballots of the employees occupying that position were not to be counted. As a result, the applicant was in a position to be certified, and I directed that a certificate issue to the applicant trade union. I also indicated that the reasons for my determination on the disputed position would follow, and further, that if the parties so wished, I would determine the status of, and provide reasons with respect to, the other disputed position of lead warehouse clerk, although the status of that position had no bearing on the outcome in the application. The parties did not make a timely request for a determination or reasons regarding the lead warehouse clerk. Accordingly, what follows are the reasons for my finding with respect to the exclusion of the auditors.
3. The agreed bargaining unit is:

all clerical employees of Penske Logistics working at 650 Riverview Line, R.R. #5, Chatham, Ontario, N7M 5J5, save and except supervisor, persons above the rank of supervisor and those persons covered under an existing collective agreement.
4. The applicant (or "the union") took the position that the auditors were not clerical employees. The union contended the auditors were supervisors as understood by the parties, having regard to their collective bargaining history with respect to a bargaining unit of production employees the union already represented long before this application was brought. Moreover, the union submitted that, because of that bargaining history, it never intended, nor did it seek, to represent the auditors in the clerical unit. In the alternative, the union said the auditors exercised managerial responsibilities within the meaning of subsection 1(3)(b) of the Act, and were excluded on that basis.
5. The position of the responding party, on the other hand, was that, having regard to their duties and responsibilities, the auditors were very much clerical employees and "employees"

within the meaning of the Act, not supervisors, and that the union's intentions were irrelevant given the agreed language of the bargaining unit.

6. I heard a great deal of evidence concerning whether or not the auditors were clerical employees, or exercised managerial functions under subsection 1(3) of the Act. I do not intend to set out that evidence because, in my view, regardless of whether the auditors are clerical employees or exercise managerial functions, they are supervisors within the meaning of the bargaining unit description. On that basis alone, they fall outside the parameters of this bargaining unit.

7. The reason that the auditors are supervisors is as follows.

8. The company operates an industrial warehouse facility in Chatham. The union and the company were parties to a collective agreement covering material handlers and sub-assemblers in that facility. I shall refer to this bargaining unit as "the production unit". Prior to the most recent round of bargaining, the production unit was described in the collective agreement as follows:

The Company does hereby recognize the Union as the exclusive bargaining agent for all material handlers and sub-assemblers employed by the Company and working exclusively at the site located at 650 Riverview Drive, Chatham, Ontario.

The term "employee(s)" in this Agreement shall mean material handlers and sub-assemblers as described above and shall in no way be interpreted to mean employees in other classifications including *inter alia* office staff and supervisors and/or drivers whether employed or engaged as dependent contractors.

9. What is of note for purposes of this decision is that the production unit expressly excluded supervisors, office staff and drivers, and, that, until the last round of collective bargaining, the parties always treated the auditors as a position within the production unit.

10. Dan DiGiovanni is the business agent for Local 880. He participated in the negotiation of the collective agreement covering the production unit (which I shall refer to as "the production collective agreement"), and also in the applicant's organization of the clerical employees pursuant to this application for certification. Tracey Arnold, a Human Resources representative of the company, also participated in the production unit collective bargaining, as a member of the management bargaining committee. She was the only person on that committee to testify on behalf of the company.

11. Mr. DiGiovanni testified that at the outset of collective bargaining in 2005 for the renewal of the production collective agreement, the union sought an expansion of the agreement's scope clause. The union wanted to include in the production unit the positions of tractor trailer drivers, clerical staff and verifiers. The company rejected that proposal, and countered that the auditors ought to be excluded from the production unit. According to Mr. DiGiovanni, the company's bargaining spokesman, Peter Badour, justified the exclusion of the auditors on the basis that they had a supervisory function and that this had led to some conflict between the auditors and other employees in the production unit. Ms. Arnold agreed in her testimony that this

was one of the grounds offered by the company to justify the exclusion of the auditors, but that the company also stated that the Auditors were clerical employees, and as such, should be grouped with other clerical employees excluded from the production bargaining unit. Mr. DiGiovanni flatly rejected that such a statement was ever made by the company in the course of the negotiations.

12. Mr. DiGiovanni testified that he was aware of two incidents of conflict that had occurred prior to the commencement of the collective bargaining. He was advised by union stewards that two auditors were reporting the errors of other production unit staff to management. This led to complaints from the workers whose errors were conveyed to management. When Mr. DiGiovanni confronted the auditors, they defended themselves by claiming it was their job to report errors. Although Ms. Arnold did not describe in detail the incidents involving the auditors, she acknowledged that there had been a problem created by the zealotness of two auditors in reporting errors of the production unit employees. Furthermore, she agreed that this was the basis for changes in the collective agreement described below.

13. Mr. DiGiovanni and the other members of the union's bargaining committee decided that it would be best to agree to the company's proposal to exclude the auditors, given the representation issues the union might face in member-versus-member complaints if the *status quo* were maintained, and in any event, the union stood to gain the twenty drivers. For these reasons, the union agreed with the company's proposal, and ultimately, a tentative agreement on all bargaining issues was reached on March 2, 2006. The tentative agreement provided for the inclusion of the drivers in the production unit, together with their monetary terms, and the removal of the auditor classification, with the caveat that any auditor incumbent could elect to transfer to another bargaining unit position.

14. The new collective agreement that followed had a term from May 8, 2006 until June 30, 2008, and contained an amended recognition clause expressly reflecting the changes involving the drivers and the auditors. However, supervisors and office staff continued to be expressly excluded from the bargaining unit.

15. When several months later it became clear to Mr. DiGiovanni that there was interest by some employees in forming a clerical bargaining unit, he gave no consideration to the inclusion of the auditors in that unit. As far as Mr. DiGiovanni was concerned, having just negotiated the auditors out of the production unit, he was not about to organize them in a new unit. In fact, according to Mr. DiGiovanni, when he called Mr. Badour's superior, Steve Capsir, to inform him of the union's intention to organize the clerical employees and to seek Mr. Capsir's view on voluntary recognition for a clerical unit, Mr. Capsir asked him about the auditors, and Mr. DiGiovanni told him the union was not pursuing them, only the clerical employees. Mr. Capsir indicated that he would get back to Mr. DiGiovanni with an answer regarding voluntary recognition. Subsequently, Mr. Capsir informed him that the company was not interested in that suggestion, and that the union would have to make an application for certification.

16. According to Mr. DiGiovanni, after the union filed the application, he and Mr. Capsir had another conversation. Mr. Capsir told Mr. DiGiovanni that as far as the company was concerned, in a clerical unit, it was "all in or all out", meaning that the auditors must be in the

clerical unit because they exercised clerical functions like the other employees in the unit. Otherwise there was no viable clerical unit at all.

17. Neither Mr. Badour nor Mr. Capsir testified during the hearing. Ms. Arnold was quite certain that the company did say during the negotiations that one of the reasons to exclude the auditors was that they were clerical employees. She thought her notes of the bargaining meetings contained such a reference, and undertook to check them. However, Ms. Arnold's notes were not tendered in evidence in this proceeding. Nor did Ms. Arnold specify who from the company management bargaining committee made such a statement. Mr. DiGiovanni categorically denied any such thing was said by the company. Ultimately, I do not think it is necessary to resolve this discrepancy in the evidence. It is clear that whether or not the statement was made, it had no bearing on the how the issue came to be resolved. Clearly, the parties focussed on the conflict problem posed by the auditors' error reporting function, not on whether or not they were clerical employees. The union agreed to the exclusion of the auditors based upon the company's assertion of a conflict, and because the union stood to gain a significant number of drivers. Only *after* Mr. DiGiovanni and Mr. Capsir discussed the possibility of voluntary recognition and the union's intentions not to organize the auditors in the clerical unit, and only *after* the application for certification unit was filed, did the company seriously push the status of the auditors as clerical employees.

18. Given that the parties came to an agreement that the auditors exercised supervisory functions and were, for that reason, excluded from the production unit, the only conclusion is that the auditors were supervisors within the meaning of the production collective agreement's recognition clause. The parties altered the labour relations status quo: the classification of auditor was removed from the production unit. It became a non-union position because the parties perceived that the incumbents carried out supervisory functions. At the time this application for certification was filed about six months later, the auditor position remained a non-union position. There was no evidence to suggest that, up to the date on which the application for certification was filed, anything had changed in the preceding six-month period with respect to the rationale for the exclusion of the auditor classification from the production unit. And there was no evidence adduced in this matter which suggests why the Auditors should not also be considered supervisors for the purposes of the agreed clerical bargaining unit. Ms. Arnold, in fact, conceded the possibility that the same kind of conflict that had occurred between the auditors and the other production employees could arise in the clerical unit. The union was therefore certainly justified in thinking that the auditors ought not be included in the union's clerical organizing drive, and were not intended by either party at the time the application for certification was filed to be included in a clerical bargaining unit.

19. For these reasons, I find that the auditors, as supervisors within the meaning of the clerical bargaining unit, are excluded from its parameters.

20. The responding party is directed to post copies of this decision in a location or locations in the workplace where it is likely to come to the attention of employees affected by this application. The copies are to remain posted for fifteen days from the date of the decision.

3705-05-ES Peter J. Doucet, Applicant v. Elizabeth Pittui and Director of Employment Standards, Responding Parties

Employment Standards – The employer challenged an order for vacation and termination pay – The employer argued that any paid time off during the employment relationship could constitute paid vacation – The Board held that the *Employment Standards Act, 2000* does not provide that a day's wages paid in circumstances where the employee did not work necessarily constitutes a vacation – Further, the Board found that the employer immediately terminated the employee when she attempted to give two weeks' notice of her resignation – Application dismissed – Order adjusted to reflect full entitlement to termination pay

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Peter J. Doucet* appearing on his own behalf; *Elizabeth Pittui* appearing on her own behalf; no one appearing for the Director of Employment Standards.

DECISION OF THE BOARD: May 8, 2007

1. This is an employer application under the *Employment Standards Act, 2000*, as amended ("the Act") for review of Order to Pay No. 08398.

2. This matter concerns the entitlement of the responding party, Elizabeth Pittui, to vacation pay and termination pay. The Employment Standards Officer ("the Officer") who investigated Ms. Pittui's claim determined that she was entitled to both, that is vacation pay of \$723.94, and termination pay in the amount of \$934.61 representing nine days' wages.

3. The applicant's position is that Ms. Pittui quit without notice, and was not entitled to termination pay. Furthermore, the applicant (or "Mr. Doucet") contended that Ms. Pittui received 26 paid days off in the applicable vacation period, and that there was nothing further owing to her in vacation pay.

The evidence, findings of fact and conclusions of law

4. Both Mr. Doucet and Ms. Pittui testified. Their testimony was not in conflict for the most part. In the recitation of the facts below, I shall set out the material differences in their evidence.

5. Ms. Pittui was employed in Mr. Doucet's law firm in Timmins as a receptionist/legal assistant from July 29, 2002. Her last full day of work was on July 11, 2005. She reported for work on July 12, 2005, but left after speaking with Mr. Doucet early in the day.

The vacation issue

6. Ms. Pittui's vacation entitlement upon commencement of employment was two weeks per annum. For some of the firm's staff, including Ms. Pittui, Mr. Doucet's policy was to increase the annual vacation entitlement by one day per year of service. Therefore, by the time

Ms. Pittui last worked for Mr. Doucet, she was accruing annual vacation at a rate of twelve days per annum.

7. Mr. Doucet also had a policy whereby staff could earn and take paid days off known as "floater days". Staff earned floater days by banking additional hours of work over and beyond their normal daily work day, and using those hours as a paid day off. They were entitled to one floater day off per month.

8. Mr. Doucet also allowed Ms. Pittui to take time off work to attend to her child's serious medical condition. Mr. Doucet testified that this was strictly unpaid time off.

9. Mr. Doucet testified that in the period between July 29, 2004 (the second anniversary of Ms. Pittui's employment) and July 12, 2005, apart from statutory holidays Ms. Pittui was not at work but was paid on 26 occasions. However, Mr. Doucet was not able to say which of the paid days off were arranged with Ms. Pittui specifically as vacation days. (In his view, it does not matter because any paid day off constitutes vacation). What is clear from his evidence is that ten of the twenty-six paid days were for the 2004 Christmas period (excluding Christmas Day and Boxing Day, which presumably were paid as statutory holidays) when the firm's office was closed for business.

10. Ms. Pittui and the other employees kept a record of their vacation days, sick days, floater days and other leave of absence on the firm's computer system. The computer document on which the employees recorded their information was designed by Tammy Picard who was responsible for the firm's payroll and human resource issues. The employees were expected to record their absences, and Mr. Doucet trusted them to be honest and accurate. These records of absence were the only official records kept by the firm. Mr. Doucet had access to them, although he never reviewed Ms. Pittui's record while she was employed. In the course of the hearing, he took no issue with the honesty or accuracy of Ms. Pittui's record of absence, which was marked as Exhibit 8.

11. Exhibit 8 does not refer to the December Christmas shutdown at all. It reflects a number of floater days, vacation days, several sick days and a day for funeral leave in the final year of Ms. Pittui's employment. Exhibit 8 shows that, in that period, Ms. Pittui took vacation on five occasions: August 16, 2004, July 4, 5, 6 and 7, 2005. These five dates coincide with five dates identified in Mr. Doucet's list of twenty-six. As I have indicated, Ms. Pittui was accruing vacation in her last year of employment on the basis of twelve days per annum. Having taken five days of vacation according to Exhibit 8, it would appear that she was entitled to approximately seven additional vacation days off.

12. As I have indicated Mr. Doucet contended that any paid day off constitutes a vacation day by operation of law. He cited no statutory provision or other authority in support of this submission. I do not accept it. The Act does not define a "vacation day" as such. It spells out the conditions for annual time off on account of vacation, and the requirements regarding the calculation of vacation pay. The Act does not provide that a day's wages paid in circumstances where the employee did not work necessarily constitutes a vacation. Nor am I aware of any decision of the Board or of a Referee/Adjudicator to such effect. The fact is that the applicant's own record, Exhibit 8, indicates that Ms. Pittui took only five days of paid vacation in the last year of her employment. That was the conclusion of the Employment Standards Officer. I

therefore see no reason to make any amendment to the Officer's order regarding the remaining vacation pay, particularly as Mr. Doucet did not offer any evidence to suggest that the Officer miscalculated that amount.

Did Ms. Pittui resign without notice?

13. Some time in 2005, Ms. Pittui started looking for alternative employment. She completed on the firm's computer system a resumé and a covering letter dated May 26, 2005 addressed to Northern Tel Human Resources Department. She did not get a position there. However, on June 30, 2005, shortly after 4:00 p.m., she received a telephone call at the office from Tembec, offering her a job, which she accepted. Ms. Pittui testified that she wanted to advise Mr. Doucet of this development but that he was in a meeting in the office with clients. At 5:15 p.m. he was still with clients. Ms. Pittui was not able to tell him of her news in person. Moreover, the next day was Canada Day, and she was taking vacation the following week. She would not be returning to the office until July 11, 2005.

14. On her return on July 11, 2005, Ms. Pittui contacted Mr. Doucet by telephone before 9:00 a.m.. He was about to join a meeting of the Ontario Civil Commission on Police Services in Toronto. Ms. Pittui scheduled these appointments in Mr. Doucet's calendar. He routinely attended this meeting in Toronto on the second Monday of each month. Ms. Pittui testified that she was not aware that Mr. Doucet was in Toronto when she placed her call. She conceded the possibility, however, that someone told her of Mr. Doucet's whereabouts that morning, although she had no recollection of such a discussion.

15. According to Mr. Doucet, Ms. Pittui told him that she had found another position and was leaving the firm immediately. Mr. Doucet said he was surprised by this announcement. However, he accepted the news and hung up. Ms. Pittui, on the other hand, testified that she expressed regret to Mr. Doucet that she was not able to tell him about her resignation face-to-face, and that she was providing two weeks notice of her resignation effective July 22, 2005 because she was beginning a new job on July 25, 2005. She further indicated that she would put her resignation in writing.

16. Shortly after this conversation, Ms. Pittui sent an e-mail to Mr. Doucet's office e-mail address, although he had no convenient means of retrieving the message while in Toronto. In it, Ms. Pittui said:

PETER,

FURTHER TO MY CALL TO YOU THIS MORNING, I AM
GIVING YOU MY TWO WEEKS NOTICE, JULY 22, 2005 WILL
BE MY LAST DAY.

I WISH I COULD HAVE TALKED TO YOU FACE TO FACE,
BUT YOU WERE NOT HERE, AND THIS WAS LIKELY EASIER
FOR ME ANYWAY!

LIZ

17. Mr. Doucet flew back to Timmins from Toronto later on July 11, 2005. He did not attend his office. On the morning of July 12, 2005 he arrived at the office before Ms. Pittui. He discovered Ms. Pittui's e-mail message. He also discovered evidence on her computer of Ms. Pittui's May 26, 2005 letter and resume to Northern Tel Human Resources Department. At 8:45 a.m., Mr. Doucet replied by e-mail to Ms. Pittui as follows:

AS WE DISCUSSED, I ACCEPTED YOUR NOTICE IMMEDIATELY, NOT IN 2 WEEKS. TODAY IS YOUR LAST DAY AND I ACCEPT YOUR RESIGNATION.

YOU KNEW ABOUT THIS JOB OFFER ALMOST 2 WEEKS AGO, YET CHOSE NOT TO ADVISE ME. YOUR EXCUSE WAS THAT I WAS WITH CLIENTS AND YOU WANTED TO DO IT FACE TO FACE. YOU OF COURSE DID NOT DO IT THAT WAY, AND CHOSE TO CALL ME AS I WAS GOING INTO MY MONTHLY OCCOPS MEETING IN TORONTO.

I HAVE ALSO SHOWN YOU THE LETTER AND RESUME WHICH WAS FOUND ON YOUR COMPUTER, DATED MAY 26, 2005, AGAIN DONE ON OFFICE TIME AND BEHIND MY BACK.

P

18. Mr. Doucet also composed a brief hand-written note to Ms. Pittui stating that he wished to see her on her arrival, and placed it on her desk.

19. When Ms. Pittui arrived at work, she found the note and went to Mr. Doucet's office. According to Mr. Doucet, he asked Ms. Pittui why she was at the office, and she replied that she intended to leave in two weeks. Mr. Doucet testified that he told her this was not the information she had conveyed to him the day previous. He also says he told her of his discovery of her application to Northern Tel, and that he accused her of knowing about her new job for a substantial period of time. He testified that Ms. Pittui replied that she had known about her new job for only two weeks, and that it had been impossible to tell him about it because he had been busy with clients. Mr. Doucet did not accept this explanation, and told Ms. Pittui that he considered this (i.e. July 12, 2005) to be her last day of work.

20. Ms. Pittui's version of the conversation is as follows. When she entered Mr. Doucet's office, he angrily threw at her a copy of her letter and resume to Northern Tel, and said that the firm's computer technician had found it on her hard drive. Mr. Doucet was upset, accusing Ms. Pittui of failing to disclose her new job despite having known about it for weeks. Ms. Pittui tried to explain that her preference would have been to tell him her news in person. When Mr. Doucet made it clear that he considered her employment at an end, Ms. Pittui packed up her belongings and left.

21. Mr. Doucet urged me not to accept Ms. Pittui's evidence where it contradicted his, on the basis of the circumstances which led to her telephone call to him on July 11, 2005. Mr. Doucet argued that Ms. Pittui's explanation for why she called him that day to announce her

new job is suspect. Mr. Doucet argued that Ms. Pittui ought not to be believed that she was not aware of his location in Toronto. He pointed out that Ms. Pittui was responsible for booking his monthly Toronto meeting, and had done so for quite some time. In Mr. Doucet's submission, it is not believable that Ms. Pittui was not aware of his presence in Toronto when she initiated the phone call on July 11, 2005.

22. I disagree. It is entirely possible that, having spent the last ten days away from the office in the course of her vacation, Ms. Pittui simply failed to appreciate that Mr. Doucet was away when she arrived at the office. Ms. Pittui conceded the possibility that someone in the office told her where Mr. Doucet was. In any event, nothing really turns on Ms. Pittui's state of mind. What does matter is the substance of the telephone conversation, and whether or not Ms. Pittui indicated then that she was resigning immediately.

23. I accept Ms. Pittui's version of the telephone conversation. It is consistent with her subsequent e-mail message in which she confirmed the two weeks' notice. Moreover, Mr. Doucet's e-mail response tends to support Ms. Pittui's version. In that e-mail, Mr. Doucet accused Ms. Pittui of having learned of her new job two weeks prior, and of having claimed she was prevented from disclosing this information because he had been busy with clients. These details were not contained in Ms. Pittui's e-mail of July 11, 2005. The only logical conclusion to draw is that Ms. Pittui did indeed reveal these details when she spoke to Mr. Doucet over the phone. There is no other way he could have known about them, given the fact that he had no further communication with her or anyone else until he returned to the office the following day.

24. Ms. Pittui's version of the telephone conversation, including her insistence that she gave Mr. Doucet notice of her resignation effective July 22, 2005 rather than resign immediately, is also more probable for other reasons. If it had been her intention to resign her position immediately, it begs the question why she felt it necessary to report for work on July 11, 2005 following her vacation, and why she apparently remained at work for the remainder of the day after her conversation with Mr. Doucet. Moreover, why did Mr. Doucet purport in his e-mail to accept Ms. Pittui's resignation effective July 12, 2005, if she had resigned immediately on July 11, 2005? Finally, why would Ms. Pittui resign her position immediately when her new job was not to commence until two weeks later?

25. I therefore find that Ms. Pittui gave notice of her resignation on July 11, 2005, orally and in writing. Mr. Doucet became upset on July 12, 2005 when he perceived that Ms. Pittui had been looking for another job and concealing information from him that he felt should have been disclosed in a more timely manner. Therefore, Mr. Doucet purported to waive the notice Ms. Pittui had provided to him on July 11, 2005, and end her employment immediately. That constituted a termination without notice. Ms. Pittui was entitled, therefore, to two weeks' termination pay, having completed more than two years, but less than three years, of employment.

Disposition

26. As I have indicated, there is no reason to interfere with the Employment Standards Officer's order with respect to vacation pay. However, it was not correct, in my view, to calculate Ms. Pittui's termination pay on the basis of nine days' wages. That calculation corresponds to Ms. Pittui's notice that she would work until July 22, 2005. However, the Act's termination provisions make no allowances for consideration of the employee's effective date of

resignation. The termination notice/pay formula under the Act is clear and unambiguous. A terminated employee who has been employed for more than two years but less than three years is entitled to a full two weeks' termination pay. In Ms. Pittui's case, that means she is entitled to ten days' wages.

27. The Officer calculated the value of nine days' wages to be \$934.61. Mr. Doucet took no issue with the quantum. Based on the Officer's calculation, Ms. Pittui was earning \$103.85 daily. Accordingly, in addition to the amount set out in the Officer's order to pay, Ms. Pittui is entitled to \$103.85 and vacation pay of \$4.15, for a total of \$108.00.

28. Accordingly, the applicant is hereby directed to pay forthwith to the Director of Employment Standards ("the Director") \$108.00 for distribution by the Director to Ms. Pittui, in addition to the wages already paid in trust. The applicant is also directed to pay forthwith an additional \$10.80 to the Director to reflect the correct amount in respect of the administrative fee.

29. The application is dismissed.

2471-06-ES; 2472-06-ES Premier Fitness, Applicant v. Janis Strathdee and Director of Employment Standards, Responding Parties; Premier Fitness, Applicant v. Elaine Fletcher and Director of Employment Standards, Responding Parties.

Employment Standards – Premier Fitness challenged an order requiring it to pay holiday pay to two personal trainers, arguing they were elect-to-work employees and exempt from such payment pursuant to s. 9(k) of O/Reg. 285/01 – The Board found that the employer scheduled the trainers for work beyond their declared availability, and expected them to meet the employer's needs – The elect-to-work status was illusory – Applications dismissed; orders to pay affirmed

BEFORE: *Kelly Waddingham*, Vice-Chair.

APPEARANCES: *Neil Proctor* and *John Hensal* for the applicant; *Janis Strathdee* and *Elaine Janet Kathleen Fletcher* appearing on their own behalf; *Alicia Gordon-Fagan* and *Tina Liehmann* for the Director of Employment Standards.

DECISION OF THE BOARD; May 31, 2007

1. This is an employer's application under section 116 of *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended (the "Act") of an Order to Pay statutory holiday pay to two claimants (Madames Fletcher and Strathdee).

2. The employer, Premier Fitness, argues that Fletcher and Strathdee were employed in an elect-to-work capacity, and thus exempt from any entitlement to holiday pay under the Act, by virtue of paragraph (k) of section 9 of Regulation 285 enacted pursuant to the Act.

3. Premier Fitness is a gym/health club. Fletcher and Strathdee were employed as personal trainers who provided individualized training to Premier Fitness' clients. Premier

Fitness does not pay its personal trainers a salary, rather personal trainers are paid only for the sessions which they work with a client.

4. Most client referrals to personal trainers are provided by Premier Fitness' Health Centre Manager ("Hensal"). In theory, personal trainers provide Hensal with their availability and new client referrals are to be scheduled by Hensal within the trainer's availability. Successive client appointments may be booked with the trainer or by other staff members having regard to the trainer's availability. In reality, Hensal would often ask Fletcher and Strathdee to accept a new client outside of their availability.

5. Hensal testified that he never threatened or disciplined a trainer for refusing to take a client. However, both Fletcher and Strathdee testified that they felt obligated to accept new clients or existing client appointments scheduled by staff members outside of their availability, as it was their impression that Hensal would stop referring new clients to them.

6. Due to this impression, Fletcher always accepted the new clients scheduled by Hensal and existing client appointments scheduled by staff members outside of her availability. Strathdee testified that she began working for Premier Fitness when the location was first opened for business, so she therefore attempted to accommodate the requests to schedule new clients outside of her availability, but as Premier Fitness became busier with the addition of new personal trainers, she began to refuse to accept new clients and found that there was a decline in the number of new client referrals which she received. The Board was provided with a chart which indicated Strathdee's income from June 2005 to March 2006. There was a steady increase in her monthly income with the exception of September 2005, when her income decreased by approximately sixty percent from the previous month.

7. Strathdee testified that on a few occasions a client would be booked by another staff member outside of her availability and without her knowledge and that she was disciplined for missing the client appointment. It is notable that Ms. Strathdee's failure to meet with one such scheduled client on May 24, 2006 formed part of the basis for her dismissal as evidenced by her letter of termination.

8. Hensal acknowledged in cross-examination that if a personal trainer on a continuing basis refused to take new clients and/or missed client appointments that he would not make as many client referrals as the personal trainer's "behaviour" indicated that they were not interested in customer service.

Disposition

9. The public holiday pay provisions appear in Part X of the Act. Pursuant to section 9(1)(k) of O.Reg. 285/01, Part X of the Act does not apply to "a person who is employed under an arrangement whereby he or she may elect to work or not when requested to do so". The case law dealing with this provision (or its predecessor) illustrates that the focus of the inquiry is whether the facts establish that the employee has complete discretion whether to work or not. The "arrangement" need not take any particular form so long as it confers such discretion on the employee. Further, the discretion must be real and not illusory - it must actually be capable of being exercised. This does not mean that an employee must have exercised the election not to work, but it does mean that the Board must be satisfied that there is no possibility of discipline or

other reprisal should the employee refuse a work assignment. There is a detailed discussion of these principles in *D.J. Calhoun Marketing & Development Limited o/a D.J.C. Research* (ESC-95-31) (January 27, 1995).

10. Premier Fitness denies disciplining a personal trainer for refusing to work outside of their availability, or missing client sessions which had been booked without the trainer's knowledge. I do not accept this argument. Premier Fitness relied upon Strathdee's failure to meet with a client who had been booked outside of her availability without her knowledge as part of the grounds for her dismissal, as evidenced by Premier Fitness' letter terminating Strathdee's employment.

11. Premier Fitness argued that Strathdee's increasing monthly income between June 2005 and March 2006 proved that there were no financial repercussions when she refused to take on new clients. I do not accept this argument. The London location for Premier Fitness opened in winter 2005 and according to the evidence continued to grow. There would be an expectation that Strathdee's income would grow as the business became busier. It is also notable that in the month of September 2005, Ms. Strathdee's income decreased by approximately sixty percent from the previous month.

12. I find that Strathdee and Fletcher have no discretion to refuse to work outside of their availability without disciplinary consequences and that Premier Fitness scheduled clients with personal trainers to meet their business/client's requirements for training. Premier Fitness expected Strathdee and Fletcher to work as scheduled by Hensal and/or other staff members and if they successively refused, Hensal acknowledged that future client referrals would be jeopardized, as this indicated that the personal trainer was not interested in serving clients.

13. For all the aforementioned reasons, the Orders to Pay are confirmed.

2515-06-ES Rajae Elalami, Applicant v. Dr. Emad Hanna and Director of Employment Standards, Responding Parties

Discharge – Employment Standards – The applicant asserted that her pregnancy played a role in the employer's decision to terminate her – The onus of establishing that there was no contravention of section 74 of the Act lies on the employer – The Board was satisfied that the employer fulfilled its burden; the Board drew no adverse inference from the employer's failure to call the employer's spouse when the applicant had not asserted in her application or at the hearing that the spouse was aware of the pregnancy – Application dismissed

BEFORE: *Susan Serena*, Vice-Chair

APPEARANCES: *Rajae Elalami* appeared on her own behalf; *Emad Hanna* and *Maria Furtado* appeared on behalf of the responding party; no one appeared for the Director of Employment Standards.

DECISION OF THE BOARD; May 2, 2007

1. This is an application pursuant to section 116(1) of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 as amended ("the Act") to review the refusal by an Employment Standards Officer to issue an order to pay against Dr. Emad Hanna ("the employer" or "Hanna").

2. The question for the Board to answer in this case is whether the fact that the applicant Rajae Elalami ("Elalami") was pregnant played any role in Hanna's decision to terminate Elalami's employment.

3. At the outset of the hearing the Board noted that neither party had counsel. The parties were therefore advised that the Board's role as an independent decision maker did not allow it to provide legal advice to either party.

4. The Act provides as follow:

74. (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,

(a) because the employee,

...

(viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or

...

(2) Subject to subsection 122(4), in any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this section lies upon the employer.

5. The following evidence was presented to the Board at the hearing on April 12, 2007:

- a) Hanna employed Elalami as a dental assistant from March 7, 2006 until July 20, 2006.
- b) On June 13, 2006 Elalami advised the office manager that she needed time off that afternoon to have an ultra sound. When asked, Elalami told the office manager that she was not pregnant even though Elalami knew that she was pregnant.
- c) When Elalami inquired on June 14, 2006 about whether she would be receiving a previously promised wage increase now that she had completed her three-month probationary period, Hanna told Elalami that he was dissatisfied with her performance and refused to grant the increase. Hanna advised Elalami that he would re-assess her situation when the office manager returned from vacation in six weeks.
- d) Beverley Mullings, a dental hygienist who also works for Hanna testified that when she expressed concerns to Hanna about Elalami's poor performance Hanna told her that he was also

dissatisfied with Elalami's performance and he was considering terminating Elalami.

- e) On the morning of July 19, 2006 Elalami told Mullings that she was pregnant. Late that afternoon Dr. Elizabeth Hanna told Mullings that Elalami was going to be fired, whereupon Mullings told Dr. Elizabeth Hanna that Elalami was pregnant.
- f) [sic]
- g) Elalami spent the morning of July 20, 2006 assisting Hanna with patients. Hanna testified that he wanted to wait until the office manager returned from vacation and arrangements could be made to locate another dental assistant before Elalami was terminated. However, on the morning of July 20th after Hanna became frustrated with the mistakes that Elalami made that morning Hanna decided he would terminate Elalami as soon as he was finished with his morning patients.
- h) Hanna testified that he was not told or was not otherwise aware that Elalami was pregnant when he terminated Elalami. He also testified that both he and his wife, Dr. Elizabeth Hanna, have busy work and social schedules that could explain why his wife did not tell him on either the evening of July 19th or morning of July 20th that Elalami was pregnant.
- i) Both Mullings and Hanna testified that on four other occasions employees working for Hanna have exercised their right under the Act to take pregnancy leave and returned to work for Hanna upon completion of the leave of absence.

6. Elalami also testified that at some point Hanna asked her, in front of a patient, if she was having an ultra sound because she was pregnant but she did not answer the question. Hanna denied asking Elalami this question and he also testified that he would not discuss a topic of this nature in front of a patient. On balance, the Board prefers the evidence of Hanna on this issue and finds that this exchange did not occur.

7. In this case, the onus of establishing that the employer did not contravene section 74 of the Act lies on the employer. The issue before the Board involves the determination of whether or not any part of the employer's decision to terminate the employee was related to the employee's pregnancy and eligibility for maternity leave under Part XIV of the Act. In determining this issue the Board is required to assess the evidence presented by the parties and, in particular, determine whether or not the employer has satisfied its burden of establishing on a balance of probabilities that the applicant's termination from employment was unrelated to the employee's pregnancy and impending right to maternity leave.

8. In *Arva Industries*, [2001] O.E.S.A.D. No. 349 (May 31, 2001), the Board described the onus on the employer and the "taint test" in the following terms at paragraph 46:

46. Adjudicators have generally accepted that there is this shifting onus in section 44 [now section 74] cases. Once the employee claimant has established the basic elements, the employer must show why the *status quo* changed. As the Board stated in *Wah Lung Labels (Canada) Inc.*, [1998] O.E.S.A.D. No. 292 (Albertyn) August 11, 1998, "the evidentiary issue is: has an adverse change been the result of the employee's pregnancy or was it for some *bona fide* business reason unrelated to the employee's pregnancy?" (at para. 63). In that decision the Board went on to state that:

64. ... Once an employee establishes her pregnancy, employer knowledge of it, and some adverse consequence to her, an adjudicator will draw an inference that the reason for that adverse change in employment circumstances of a pregnant employee is because of her pregnancy. An employer may, of course, rebut that inference. ...

65. Having said this, I do not mean to suggest that an employer may never take action in relation to a pregnant employee which is prejudicial towards her. A pregnant employee is no better off than any other employee merely on account of her pregnancy. The purpose of section 44 of the Act is to ensure that she is in *no worse* position. That means that if an employer has a genuine operational reason for taking an adverse decision against a pregnant employee (e.g. misconduct resulting in discipline, real economic need resulting in layoff; etc.), and the employer can prove that reason to have been the only reason for the decision, then the employer will have discharged the evidentiary onus.

66. In other words, I interpret section 44 to involve a taint test – if the unwanted intimidation, discipline, suspension, layoff, dismissal or penalty of an employee known to be pregnant is tainted by consideration of her pregnancy, then the section has been violated, but this does not mean that any and every intimidation, discipline, suspension, layoff, dismissal or penalty of a pregnant employee is *ipso facto* a violation of section 44.

9. Having carefully considered all of the evidence in this case I am satisfied that Hanna has fulfilled the burden of establishing that his decision to terminate Elalami was not in any way connected to Elalami's pregnancy and/or her eligibility for leave under Part XIV of the Act.

10. I am satisfied when Hanna decided to terminate Elalami he was not aware that Elalami was pregnant. Nor, does the evidence support the conclusion that Elalami was terminated because Hanna suspected Elalami was pregnant. Instead, the Board finds that Elalami was terminated after only four months of employment because Hanna and others in the office were dissatisfied with Elalami's performance as a dental assistant and that Hanna decided to terminate Elalami on July 20th after he became frustrated by the mistakes she made that morning.

11. Although it appears that the office manager may have suspected that Elalami was pregnant Elalami told the office manager on June 13th that she was not pregnant even though this

answer was not truthful. The office manager subsequently left on an extended vacation and did not return to work until after Hanna had terminated Elalami's employment on July 20, 2006.

12. The first time Elalami told anyone in the office that she was pregnant was when she informed Mullings on July 19th. After Elalami had left for the day, Mullings told Dr. Elizabeth Hanna that Elalami was pregnant. Imad Hanna steadfastly maintains that this information was not passed on to him before he terminated Elalami mid-way through the following day.

13. Neither party chose to call Dr. Elizabeth Hanna as a witness so the Board does not have the benefit of her evidence regarding what, if anything, she did with the information she received from Mullings. However, the Board is not prepared to draw an adverse inference against the responding party as a result of the failure to call Dr. Elizabeth Hanna as a witness in circumstances where the applicant did not assert in her application or at the outset of the hearing that Dr. Elizabeth Hanna was aware that Elalami was pregnant so as to put the responding party on notice regarding this evidence. Instead, this information was only supplied after the hearing was delayed in order to permit Mullings to testify on behalf of the applicant.

14. Hanna testified in a straightforward and credible manner regarding the fact that he did not know Elalami was pregnant. He also provided the Board with a plausible explanation as to why his wife did not convey the information about Elalami's pregnancy to him in the short time-period between when she learned about the pregnancy and when Hanna terminated Elalami. Further, in view of Hanna's intention to wait to terminate Elalami until after the office manager returned from vacation and another dental assistant was hired there was no apparent reason for Dr. Elizabeth Hanna to convey the information quickly and she would not have any apparent reason to know that Hanna would become frustrated with Elalami's mistakes on July 20th and fire her part-way through the day.

15. Further, the evidence is that Hanna had concerns about Elalami's performance long before anyone in the office was aware that Elalami was pregnant. There is no dispute in the evidence that Hanna told Elalami he was dissatisfied with her performance when he did not grant the wage increase Elalami expected to receive after completing her three-month probationary period. Mullings also expressed dissatisfaction with Elalami's performance. This evidence supports the employer's assertion that poor performance was the sole reason for terminating Elalami.

16. Finally, the evidence before the Board is that there have been four occasions in which employees have exercised rights under Part XIV of the Act and returned to work for Hanna.

17. For all of these reasons I am satisfied that Hanna's decision to terminate Elalami was not contrary to section 74 of the Act.

18. This application is dismissed.

Certification – Construction Industry – Employer – Practice and Procedure – Related Employer – Timeliness – The Board found nothing wrong with the application naming three possible employers as responding parties: the applicant specifically referenced subsection 1(4) and asked that the certificate name all three entities – The responding party filed its response five days late but asked the Board to exercise its discretion to accept the late-filed information in accordance with the ruling of the Divisional Court in *Maystar* (see [2007] OLRB Rep. March/April 459) – The Board examined possible criteria for the exercise of discretion: the nature of certification applications and the need for speed in their determination; the reasons for the late filing; prejudice to the applicant – The Board finds that prejudice is present in every case, and will be the same in every case – In the circumstances of this case, the Board does not exercise its discretion to accept the late-filed information – The applicant delivered its materials to three fax machines for the three employers; personal delivery is not a requirement of the Act or the Board's Rules – Time extension allowed for response to related employer allegations – Matter continues

BEFORE: *David A. McKee*, Vice-Chair.

DECISION OF THE BOARD; May 16, 2007

1. This is an application for certification brought pursuant to the construction industry provisions, and in particular section 128.1 of the *Labour Relations Act, 1995*, S.O. 1995 Ch. 1, as amended (the "Act"). This decision deals with two issues raised by the responding parties: first, whether an applicant can apply to be certified for a group of companies in a single application and second, whether the Board ought to exercise its discretion to accept a response which has been filed after the time provided for in subsection 128.1(3) and in the Board's Rules of Procedure.

2. The application was filed on April 25, 2007. As permitted by the Rules, the applicant, Labourers International Union of North America, Ontario Provincial District Council (the "Union") delivered a copy of the application and the supporting materials required by the Rules to the responding parties on April 26, 2007 by facsimile transmission. It identified all three responding parties, Reids Uptown Homes, Reidco North Ltd. and S.R. Properties Inc. as carrying on business at two addresses: 115 Elmira Road N. in Guelph, and 182 Alder Drive in Cambridge. It delivered the material to two different facsimile numbers: 519-249-1700 and 519-826-3338, and filed a Confirmation of Filing with the Board indicating those facts.

3. On April 27, 2007 the Board sent a Confirmation of Filing to these two facsimile numbers at 12:35 and 12:31 respectively. The Confirmation indicates that a response must be filed within two working days of delivery of the application to the responding parties, (i.e. by the end of the calendar day on April 30, 2007).

4. No response was received from the responding parties within the time required. On May 4, 2007 counsel for the employer wrote to the Board stating that she was acting for the responding parties and that a response would be filed shortly. A response was filed on Monday, May 7, 2007. It lists the three responding parties' addresses as 192 Alder Drive, Cambridge and 115A Elmira Road North, Guelph. It gives as facsimile numbers the same two numbers as those provided by the Union: 519-249-1700 and 519-826-3338. The responding parties also filed a

Confirmation of Posting indicating that they had posted the Notice to Employees filed by the Board on May 7, 2007. No submissions have been received from any employee.

5. The response raises two issues: whether it is proper to name three responding parties in an application for certification and whether the Board ought, if it does not dismiss the application on the first ground, to extend the time for the filing of a response to the application to May 7, 2007, or to consider certain information contained in it.

Naming of more than one responding party

6. It is evident that the application names at least two and possibly three legal entities. Two are styled as corporations and one as a business name, which may be the name under which one of the corporate responding parties carries on business, or it may be the business name of a third entity. The responding parties assert that this is improper, and should lead the Board to dismiss the application in its entirety. In doing so, the responding parties rely on *Monte Vista Contracting Inc.*, [1998] OLRB Rep. Sept./Oct. 847, reconsideration denied at *Monte Vista Contracting Inc. Scrivens Essential Services Inc.* [1998] O.L.R.D. No. 3738, Board File No. 2090-98-R (October 20, 1998) and *Merton Residences Corp.* [1998] O.L.R.D. No. 1211, Board File No. 0140-98-R (April 17, 1998).

7. The issue for the panels of the Board in those two decisions was that, in an application for certification, the Board is required to determine whether or not 40% of the persons in the bargaining unit were members of the applicant on the application date. The two (or four) employers were clearly separate legal entities. No request to apply subsection 1(4) had been made, and without such a formal request, the Board was required, in their view, to have regard to two or four separate bargaining units. Since the membership applications were not identified as to employer, the Board could not identify which of the separate bargaining units the employees fell into, and therefore could not make the 40% determination. It therefore dismissed the application.

8. Neither *Monte Vista Contracting Inc.*, *supra*, nor *Merton Residences Corp.*, *supra*, has had any lasting impact on the Board's case law. In decisions that did not refer to either decision, the Board has found no reason to dismiss an application that names more than one legal entity as responding parties: *Fairgate Homes* [2003] O.L.R.D. No. 3473, Board File No. 1459-03-R and *Siemens Canada Ltd.* [2007] O.L.R.D. No. 3, Board File Nos. 2688-06-R, 2719-06-R (January 2, 2007); *Mondiale Developments* (May 16, 2003, Board File No. 3180-02-R); *Mayfair Electric Family Holdings Ltd.* [2002] O.L.R.D. No. 3766, Board File No. 2328-02-R (November 6, 2002); *Global Electric* [2001] O.L.R.D. No. 2587, Board File No. 0918-01-R (June 28, 2001); *Acmar Masonry Inc.* [2007] O.L.R.D. No. 849, Board File No. 3606-06-R (February 23, 2007). In *Sahara Holdings Ltd (1989) Inc.*, [2007] O.L.R.D. No. 781, Board File No. 3611-06-R (February 22, 2007), the Board faced the same issue (the need to hold a vote) as in those two cases and simply ordered the vote and segregated each ballot until the matter was determined.

9. In the construction industry, the use of multiple names and multiple corporate entities is commonplace in the extreme. As the Union points out, there are currently many displacement applications before the Board in precisely that form simply because the original collective agreement has been executed in that combined fashion. Indeed, many construction industry unions regularly file applications that way, either because they may be attempting to capture the

whole of an employer's enterprise or because they are uncertain as to which is the real operating entity. If no response is received, then the Board frequently grants a certificate in the name of all of the employers, with or without an explicit mention of subsection 1(4) (see e.g. *Lakeview Group Ltd.* [2007] O.L.R.D. No. 759, Board File No. 3556-06-R (February 20, 2007)). If the responding parties object, then the Board inquires into which employer is the true employer or employers for the purposes of the application for certification. This occasionally leads to a consideration of the related employer issues.

10. The two decisions relied on by the responding parties have not been followed by the Board, are perhaps distinguishable, and in any event, with all due respect, not persuasive. First, in this case the applicant specifically indicated in the application that it relied on the provisions of subsection 1(4) and undertook to file a separate application if one was required. That was sufficient reason for the Board in *Knight Electrical Contractors Ltd.* [2005] O.L.R.D. No. 610, Board File No. 0081-03-R (February 7, 2005) to decline to follow the cases cited by the responding parties. Even if the applicant had not raised the issue of subsection 1(4), the naming of three entities in the application is an implicit request to the Board to apply subsection 1(4).

11. Neither *Monte Vista Contracting Inc.*, *supra*, nor *Merton Residences Corp.*, *supra*, refers to any other decision of the Board, nor to a decision of the Divisional Court in *Re Canac Shock Absorbers Ltd. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America Local 984, et al.* (1973) 34 D.L.R. (3d) 644. In that case, the Union had filed a sale of business application. It did not make an application under subsection 1(4). The employers both admitted that a sale of part of its business had taken place. At the hearing, the Union sought also to seek relief under subsection 1(4) and to rely as well on the admissions made by the two employers with respect to the manner of the sale. A strike was in progress at the premises of one employer and this would have, apparently, changed the nature of the relief available to the Union. The Employers objected, but the Board agreed to consider subsection 1(4) in the context of an application for a declaration of a sale of a business. The Divisional Court found nothing improper in that decision and said at page 647:

It seems to be a very narrow approach indeed to an application before the Labour Relations Board to say in effect that the Board members have to wear blinkers, and limit their inquiry and tunnel their approach to exclude the important matters raised in the very application before them. It is our opinion, therefore, that the inquiry which the Board was prepared to enter upon was one within the scope of its exclusive jurisdiction to determine in its own proceedings, which has been so frequently recognized by the Courts as to require no authority at this time. The Court must not lose sight of what my brother Hughes describes as a "resounding privative clause", s. 97, whereby all questions that fall to be determined on similar applications are remitted to the Board whose determination is immune from judicial review, except in circumstances not present here.

12. As the Court said, the Board may apply any section of the Act at any time that it is appropriate in a proceeding. I would add that certain natural justice issues, such as notice, must be observed as well. The application obviously names at least two and possibly three legal entities.

13. I note as well that the responding parties, in filing their late response, do not attempt to separate their list of employees as among the three responding parties, but have filed a single

"Schedule A", listing all the employees who worked, perhaps for all three employers. Given the responding parties' argument, I do not, however, place much reliance on that observation.

14. This case is no different from any of the many other similar applications the Board has received over the years. The application explicitly asks the Board to apply subsection 1(4) and to issue a certificate in respect of all three employers. Even if I were not prepared to do so, there is certainly no need to dismiss the application. All that would be appropriate would be to adopt the solution that the Board adopted in *Sahara Holdings (1989) Inc.*, *supra*, or to require the applicant to file an application under subsection 1(4), and hold the certification application in abeyance until it was completed. In this case, as will be seen, that is the practical result of this decision.

The Late Response

15. The response was filed five days after the date prescribed by the Board's Rules. This means that a statement by the responding parties as to the number and identity of the employees was not provided to the Board in accordance with subsection 128.1(3) and the response was not filed with the Board under Rule 25.5. The responding parties rely on the Divisional Court's decision in *Maystar General Contractors Inc. and International Union Of Painters and Allied Trades Local Union 1819*, [2007] O.J. 1067; 2007 CanLII 8928 (ON S.C.D.C.).

16. The applicant suggests the Board should disregard the decision as being wrongly decided. I decline to do so; the decision is binding unless and until reversed by the Court of Appeal or another decision of the Divisional Court.

17. Counsel for the responding parties somewhat misstates the effect of the Court's decision. The Court did not say that the Board's Rules (and in particular Rule 3.2 and 40.7) give it the power to override a specific statutory provision. The decision does state that the Board has a discretion to consider "late-filed information", that is information filed after the time required by subsection 128.1(3). With respect to any other issue raised in the response, the Board always has the discretion to extend the time for the filing of a response under its Rules under Rule 3.2 or to relieve against the strict application of the Rules under Rule 40.7. The real issue in this case is what the Board should do with the "late-filed information" that was provided to the Board after the time prescribed by subsection 128.1(3).

Discretion

18. In *Air Kool*, [2005] OLRB Rep. July/Aug. 525 (August 17, 2005), the Board concluded that subsection 128.1(3) required an employer to provide information with respect to the number and identity of persons in the bargaining unit and its position on the bargaining unit description within two days of receipt of the application. Failure to do so meant that the Board could not consider any information provided by the employer under subsection 128.1(3) after that time. The Divisional Court dealt with that decision directly in *Maystar General Contractors Inc.*, *supra*. It concluded that the word "shall" in section 128.1 (3) is "imperative" but not mandatory. It said:

Subsection 128.1 (4) does not direct the Board to not consider late-filed information. This conclusion is consistent with the highly prescriptive nature of the certification provisions in the LRA as noted by the Board and emphasized by the Union in this application. Given that the Legislature's

clear intent is to “closely manage the establishment of bargaining rights by certification”, if the Legislature had intended the Board to *always* refuse to consider late-filed information, it would have expressly said so. [emphasis in original]

The Divisional Court concluded that the Board has no discretion to extend the time for providing information under subsection 128.1(3), but it does have the discretion to consider “late-filed information”.

19. There have been few cases since *Maystar General Contractors, supra*, where the Board has had to consider whether to exercise its discretion, and all of them have considered fact situations that are very similar to that of *Maystar, supra*. In each case the Board has focused on the employer’s explanation about the circumstances of delivery of the application or of the response. In *Maystar*, the responding party had delivered its response to the applicant trade union on time and simply neglected to deliver a copy to the Board as a result of an oversight in counsel’s office. In *Gagnon Demolition Inc.* [2007] O.L.R.D. No. 1448, Board File No. 3886-06-R (April 11, 2007), the same facts were present except that the responding party had faxed the response to the Board and had simply failed to appreciate that the fax report was one that read “busy” and indicated no delivery. In *Kralik Electrical Services Inc.* [2007] O.L.R.D. No. 1525, Board File No. 0013-07-R (April 13, 2007), the Board was persuaded to exercise its discretion to consider late-filed information because it accepted that, although the application had been delivered to the responding party’s fax machine, the responding party could not see the application because the digital information had been erased electronically from the fax machine by a power failure before it could be printed.

20. This is the first case that involves something other than a failed attempt by an employer to respond to an application for certification, or an inability to do so. The question for the Board to determine is the circumstances under which it should consider the late-filed information of an employer, and what factors it should consider in deciding whether to exercise its discretion to do so.

Time Limits under the Labour Relations Act, 1995

21. In this case, the Act requires that the information be filed within 2 days. That is a very short period of time. However, that short time period must be seen in the context of how time limits are dealt with in the Act.

22. There are many short time limits under the Act:

- Subsection 8(5) requires a vote to be held within 5 days of the application if possible; subsection 8.1(3) requires that a notice under that section must be given within 2 days of receipt of the application for certification;
- Subsection 7(4) and the provisions with respect to the appointment of a conciliation officer create a three month “window” at least every three years when a displacement application or termination application may be made to terminate a union’s bargaining rights, but the Board has no power to extend that time if an applicant is late, even by one day (*Associated Contracting Inc.*, [1998] OLRB Rep. Nov./Dec. 903);

- Subsection 43(4) requires the Board to hold a hearing in a first contract arbitration within 21 days of the application, and to render a decision within 45 days;
- Subsection 128.1(3) requires an employer to file information about the bargaining unit description and the identity and number of persons in the bargaining unit within 2 days;
- Subsection 133(6) requires the Board to hold a hearing within 14 days of receipt of a referral to arbitration;
- Subsection 165(7) requires a complaint about the process of ratification of a Provincial Collective Agreement to be made to the Minister within 10 days of the vote;
- Subsection 163.1(9) requires a union objecting to the terms of a project agreement to make that application within 14 days of receiving notice of the agreement (*Sarnia Construction Association*, [1999] OLRB Rep Sept./Oct. 884; reconsideration denied at [1999] OLRB Rep Nov./Dec. 1091);

The short time limits in the Act are a reflection of 60 years of labour relations reality, reflected in the often quoted phrase "labour relations delayed is labour relations defeated and denied".

23. The shortest limits are found in the certification procedures under the Act. The Board's experience, reflected consistently in the Act, is that it is at the time of certification that one finds the greatest risk of a loss of the ability to exercise rights under the Act. Simply put, the Act provides as one of its purposes "To facilitate collective bargaining between employers and trade unions that are the freely designated representatives of employees". The reality of organizing employees for the purpose of collective bargaining is simply that the ability of unions and employees to successfully achieve those objects can be defeated by the passage of time. Delay at the point of certification is the sort of delay that is most destructive of their rights. Such a state of affairs can lead to the defeat of the objects for which the Act was created; to a loss of respect for the law (and therefore a greater reliance on self-help remedies); and to an invitation to employers to commit the unfair labour practices that are prohibited by the Act in the hopes of an ultimate reward even if there is a financial penalty to be incurred along the way.

24. In part, this is a reflection of the subject matter of an application for certification as opposed to an action for damages. An action for damages focuses on events in the past that are not alterable and that give rise to a payment in money. An application for certification is certainly based on a demonstration that a union had the support of a majority of employees at a fixed point in time, but it defines a relationship into the future for the employer, the employees and the trade union, either in collective bargaining or not. It therefore is concerned with a fluid situation that can and will change simply because of the passage of time. The need to ensure that rights are not meaningless means that the Board, and its processes, must move quickly.

Statutory history and context

25. This statutory principle is evident in the manner in which section 128.1 was drafted. Section 8, introduced in 1995 to replace the previous provisions of the Act dealing with certification, did not set a specific response date. However, by providing that a vote ought to take place within 5 days of the filing of the application, it defined very narrow parameters for the Board within which to set a response date. In 1998, the Act was amended to include a specific response date for the filing of notice under section 8.1; subsection 8.1(3) required it to be filed within 2 days of receipt of the application. This corresponded to the Board's rule relating to the filing of responses. Apparently the legislature wanted to make the 2-day limit a matter of statutory prescription, rather than leaving it in the Board's hands to set it (or extend it) under the Rules of Procedure.

26. Section 128.1 was added to the Act in 2005. While it was seen as a return to the pre-1995 regime of determining whether the union represented a majority of employees by reviewing membership evidence rather than the results of a representation vote, the language of section 128.1 in many ways mirrors that of section 8 and 8.1. It too provides that the employer must respond to an application, to the extent of the bargaining unit description and the number and identity of persons in the bargaining unit, within 2 days. Despite the fact that section 128.1 specifically contemplated that there might be no representation vote before the union was certified, the possibility of a representation vote exists in every application, and the Act repeats the very short time limits of section 8 and 8.1.

27. The need for expedition is particularly acute in the construction industry. No job site is permanent and no work force is likely to be stable beyond the end of one project. This reality of the construction industry has resulted in a detailed regulation of the acquisition of bargaining rights and the conduct of collective bargaining in sections 126 to 162 that are not found elsewhere in the Act. This of course includes section 128.1 in particular.

Factors to be considered when exercising this discretion*Circumstances surrounding the failure to file*

28. Every case must be decided on its own merits. However, in the abstract it seems to me that the following factors might be relevant:

- the reasons for the failure to file a response in a timely fashion (the facts of *Maystar General Contractors Inc.* and *Kralic Electrical Services Inc.* are a good example of this);
- whether the union had actual notice of the employer's position;
- the conduct of the union, i.e. did it contribute to the employer's delay, did it misrepresent (innocently or deliberately) an important matter to the Board;
- whether there is any history of dealing between the employer and the applicant union that is relevant to the issue of the employer's lateness in filing the application;

- whether the employer acted quickly on learning of the true situation.

The overriding consideration is, in my view, whether the employer attempted to file a timely response, or would have filed a timely response but was unable to do so because of reasons that are beyond its control, or the result of an innocent error that causes no prejudice to any other party or the Board. Indeed, this has been the focus of the Board's concern in the cases that it has dealt with since the decision in *Maystar General Contractors*, *supra*, was released.

Prejudice

29. The issue of prejudice must be seen in the context of the two-day time limit. It will, in fact, be essentially the same level of prejudice in every case. It is not possible to point to the kind of specific lost opportunity that the Board identified in cases such as *Iori Plaster & Drywall Contractors Inc.* [1997] O.L.R.D. No. 4411, Board File No. 1719-96-R (February 21, 1997) and *New Generation Group*, [1998] OLRB Rep. Nov./Dec. 990 when a representation vote was required in each case. There is, however, a real prejudice that is not dispelled, and will be the same almost every time.

30. The Board's experience in construction industry applications is that a significant minority of employers do not file a response, for any number of reasons. Thus a trade union is unlikely to be surprised by the absence of a response; it is a common occurrence. Disputes about whether an employee is properly in the bargaining unit usually centre on whether the person was at work on the application date and what that person was doing. The information about who was working on which site and what work each employee was doing is, at the best of times, productive of a surprising amount of uncertain evidence when the matters are heard. Thus it is important for all parties to know what the position of the other parties is very quickly.

31. Even where a union has information about a particular job site, the significance of specific individuals and the specific work they were doing is not necessarily apparent until an issue is raised by an employer. The possibility of lost or ignored evidence arises even over a short period of time. In addition, and particularly in circumstances where a union is faced with a suggestion that there were more employees than they were aware of or believed to be at work, or the existence of an alleged job site of which they were unaware, the ability to ascertain accurate information about the factual basis for the employer's position diminishes by the hour. A delay of even one or two days increases this difficulty. The ease with which a person working on a construction site will be able to determine who he or she was working with and what tasks were accomplished on an otherwise unremarkable working day falls off with surprising rapidity.

32. The prejudice then is real, even in the context of the very short time limits that prevail in certification applications. What is perhaps even more significant is that this prejudice will be the same in every case. Any decision to consider late-filed information (except in cases such as *Maystar General Contracting Inc.*, *supra*, where the union in fact had the information) will always involve prejudice, and the same kind of prejudice, to the union. That suggests an even greater focus on the reasons for the employer's failure to provide the information to the Board in a timely fashion.

The possible effect of considering the information

33. One matter that is, in my view, not a significant factor in the exercise of that discretion is the possibility that considering the late information might have an effect on the result in the case. The information that is the focus of subsection 128.1(3) is limited to two very important facts: the number and identity of persons in the bargaining unit and the bargaining unit description. This may be accomplished by providing a list of names with no other information. The Board will never be in a position to assess the likely strength of the employer's position; it will simply be aware that there is a dispute that will require litigation to resolve.

34. The fact that the information might produce a different result to the case is not a reason in and of itself to exercise the Board's discretion. Presumably that possibility would always be the reason why a responding party would wish to pursue a late-filed response, and that is what the legislature must have contemplated when setting the 2-day time limit. If the fact that the result might be affected by the "late filed information" is sufficient to cause the Board to exercise its discretion to consider it as if it had been filed in a timely fashion, there would be no point in imposing a time limit at all, and particularly one enshrined in the Act rather than left to the Board.

Conclusion

35. How these or any other factors will be applied will be determined by the facts of the cases that actually arise. In light of the importance of and the reasons for the short time for filing, the circumstances will be closely scrutinized. However, it appears at this point that the first issue to examine is the kind of issues related to the delivery of the application and the reasons for the failure to observe the statutory time limits. If the responding party cannot demonstrate that it has tried to provide the information required by subsection 128.1(3) or was prevented from doing so, it is unlikely that other issues will be of significance. That remains to be seen as other fact situations arise.

The exercise of discretion in this case

36. The facts on which the responding parties rely are as follows:

Various copies of the Application were sent to the attention of Mr. Shawn Reid to a variety of different fax machines at a variety of different locations. Mr. Shawn Reid does not work at all of these locations, and as such, did not receive all of the faxes. In fact, Mr. Reid has been out of the office and did not receive a copy of the fax until Friday, May 4, 2007. As soon as the Application was received by Mr. Reid, the Responding Parties acted diligently in preparing a response and filing it with the Board as soon as possible. On the afternoon of Friday, May 4, correspondence was sent to the Board indicating that a response would be filed as soon as possible. This response was filed with the Board first thing on Monday, May 7th.

37. These facts do not cause me to exercise the Board's discretion to consider the late-filed information required under subsection 128.1(3). The three responding parties do not include Mr. Shawn Reid. He is identified by the Union as the representative of the responding parties, and this does not appear to be denied by the responding parties. Indeed, the responding parties appear to date the delivery to each of the three of them from the moment when the application

came to Mr. Reid's attention. The Board's Rules require the application to be delivered to the responding party or responding parties. Facsimile transmission is one method of effecting this delivery. This is not the same as the *Rules of Practice* under the *Courts of Justice Act*, but even they do not require the service on a director or officer of a corporation. Rule 16.02(1)(c) of the *Rules of Practice* also contemplates service on "a person at any place of business of the corporation who appears to be in control or management of the place of business". In the absence of any officer of a corporation, of course, an office employee may well appear to be in control of the place of business.

38. Under the Board's Rules, delivery (not service) to a facsimile copier number is sufficient for the Board's purposes. Virtually every business, including, according to the response, the responding parties, carries on business with a fax machine at which it receives documents and correspondence related to the conduct of its business in the ordinary course of business. As the Board said in *Eastern Drywall (2000) Inc.* [2006] O.L.R.D. No. 2308, Board File No. 0813-06-R (June 20, 2006) at paragraph 6:

The Board's Rules do not require that documents be "served" which as counsel points out has a specific meaning in the realm of civil procedure. The Board's Rules chose the word "deliver" and our jurisprudence has specifically declined to import and apply the concept of "service" from the civil courts. In *6364144 Canada Inc. c.o.b. as ICI Construction Management* 2006 CanLII 973 (ON L.B.R.) the Board explained that if a document is conveyed to an address where a party carries on a commercial business and accepts other commercial communications, then the document has been "delivered" regardless of whether there is someone present to receive it:

10. In the Board's jurisprudence, "delivery" is not the same as "service" under the Rules of Civil Procedure. A document may be delivered to a corporate responding party without any receipt by, or acceptance of, the document by any particular person. Indeed, the first method of delivery identified in Rule 24.1(a), facsimile transmission, contemplates that the document will be reprinted by a machine in the other party's place of business whether there is anyone there to take hold of it or not. The Board has accepted delivery to a party's place of business as valid delivery.

11. The Board has reasoned that if a responding party in an application carries on business at an address and accepts commercial communications in a particular way, it accepts the risk of a loss or late receipt of such commercial communications. The Board has concluded that an application or other communication made in a proceeding under the Act will be found to have been delivered within the meaning of the Board's Rules at the time it has been delivered to the place where, and in the manner which, a responding party carries on business and accepts commercial communications in the ordinary course of business. That applies to a commercial office space, a mail box on the side of the road or a fax machine: *Kool Fab Mechanical* [2005] O.L.R.D. No. 4700 *Norben Interior Design*, [1984] OLRB Rep. June 851, at paragraph 7; *Forano Construction Ltd.*, [1985] OLRB Rep. Jan. 73, and *Professional Masonry Service*, [2000] OLRB Rep. Jan./Feb 107.

39. Neither the Board nor the applicant Union is required to ascertain the manner in which the employer in this case or any other carries on its business. If the employer is prepared to carry on business through a particular fax number, then delivery to that number is delivery to the corporation or business that carries on business at it. It is up to the employer to arrange its affairs so that there is paper in the fax machine or that there is someone there to attend to it. It is not at all difficult to unplug a fax machine if that is what is required. Indeed, the responding parties state only that Mr. Reid did not see the application until May 4, 2007. They do not provide any information about how the offices in which the two fax machines are located are set up, how they function, or who is present in them at what times.

40. The Board's case law has been consistent for many years: delivery to an employer in one of the manners in which the employer receives documents and correspondence related to the conduct of its business in the ordinary course of business is sufficient for finding that the application has been delivered to the employer: *Professional Masonry Service*, [2000] OLRB Rep. Jan./Feb. 107; *Glasbau Hahn GmbH + Company. KG* [2006] O.L.R.D. No. 1336, Board File No. 1410-05-R (April 7, 2006); *City of Kawartha Lakes-Transit* [2001] O.L.R.D. No. 678, Board File No. 3368-00-R (February 21, 2001); *Tormina Homes* [2002] O.L.R.D. No. 1775, Board File No. 0542-02-R (June 3, 2002); *Eastern Drywall (2000) Inc.* [2006] O.L.R.D. No. 2308, Board File No. 0813-06-R (June 20, 2006); *Blue Line Plumbing and Heating Ltd.* [2006] O.L.R.D. No. 1124, Board File No. 4129-05-R (March 30, 2006).

Decision

41. In the circumstances of this case, then, delivery to the responding parties was made in a manner that is entirely proper. If the responding parties arrange their affairs so that important legal matters can be left unattended for periods of time, that is not a reason to consider "late-filed information" in an application for certification. I therefore decline to exercise the Board's discretion to consider the information in the response with respect to the number of employees in the bargaining unit that was required by subsection 128.1(3) to be filed within two days of delivery of the application.

42. The second issue is whether to extend the time under the Board's Rules of Procedure for the filing of a response for the purpose of any issue raised in it other than the composition of the bargaining unit. In practical terms in this case, that means only the issue of whether the three responding parties ought to be treated as one employer for all purposes of the Act. There is no particular reason not to extend the time for the filing of the response for this purpose. The time for filing a response to an application under subsection 1(4) of the Act is found in the Board's Rules and not in the Act, and that time is 10 days. The Board has frequently extended the time for filing a response to a related employer application. There is none of the urgency with respect to such an application that is associated with an application for certification, although there is a greater sense of urgency in the context of a certification application than where the union's bargaining rights already exist in respect of one employer. In addition, it is the kind of delay that the Union was implicitly prepared to accept when it filed the application in the manner it did and specifically raised subsection 1(4).

43. I therefore extend the time for the filing of a response, for the purposes of challenging the assertion that the responding parties should be treated as one employer only. The Union is directed within 5 days of receipt of this decision to file the particulars it has with respect to the related or associated nature of the responding parties' operations, much as it would in the related

employer application it undertook to file. The responding parties are to file a responding set of pleadings within 7 days of receipt of those particulars.

44. I am not seized of this application.

4171-06-R Brick and Allied Craft Union of Canada, Applicant v. **Stefcon Construction Inc.**, Responding Party v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20, Intervenors

Certification – Construction Industry – BACU filed a card-based application to certify the employees in a bargaining unit for which it already holds bargaining rights – When asked by the Board to explain its motivation, the applicant submitted that it need not provide any justification other than to assert it was exercising its statutory rights – Notwithstanding the Board's concerns that a grant of the application would place the applicant in the exact position it occupied when it made the application (as would a dismissal of the application), and despite the fact that granting the certificate would allow the applicant to unilaterally obtain early termination of its existing collective agreement, and in the absence of any opposition from either the responding party or the intervenors, the Board could find nothing in the Act to explicitly preclude the application for certification – In the absence of any opposition to the application, the matter is allowed to proceed – Matter referred to Regional Certification Meeting

BEFORE: *Harry Freedman*, Vice-Chair, and Board Members *John Tomlinson* and *Alan Haward*.

DECISION OF THE BOARD; May 28, 2007

1. The Board, by decision dated April 12, 2007 in this application for certification filed under the construction industry provisions of the *Labour Relations Act*, 1995, S.O. 1995, c.1, as amended (the "Act") the applicant elected to have dealt with under section 128.1 of the Act, made a number of determinations and noted that the applicant seeks certification in respect of a bargaining unit for which it already holds bargaining rights.

2. The intervenors submitted this application should be dismissed. The intervenors' position was succinctly stated in their intervention where they stated: "The Applicant was certified for this bargaining unit in 2004. It cannot re-certify itself."

3. The Board in its April 12th decision in this application raised a number of concerns it had and directed the applicant to advise the Board and the other parties why it is seeking certification for the same bargaining unit for which it already holds bargaining rights. In addition, the Board sought the applicant's submissions as to whether the Board has the discretion to refuse to proceed with or dismiss this application if the applicant did not have a *bona fide* purpose for making it, and if so, why the Board should not dismiss it.

4. The applicant filed its submissions in which it does not tell the Board why it is seeking certification for the same bargaining unit for which it already holds bargaining rights. The applicant does go on to submit that it and the employees it represents are exercising rights under the Act to choose a union to represent them and to apply for certification. The applicant contends it is not up to a Vice-Chair of the Board to determine whether an applicant seeking certification has a *bona fide* reason for doing so. The applicant's answer in response to the Board's direction states:

The Applicant is exercising its rights under the Act; the Act does not require it to prove a *bona fide* intention, whatever that is, that the Board refers to in its decision. The intention of the BACU is to be certified for the units applied for. Period.

5. The applicant holds the bargaining rights for the employees in the bargaining unit that is the subject of this application for certification. The applicant does not explain how certification can provide it with anything greater than it already has. If this application for certification were granted, it would be certified as the exclusive bargaining agent of the employees in the bargaining unit, which is the position the applicant was in when it made this application. If this application for certification were to be dismissed, it would continue to hold those bargaining rights, and nothing would change.

6. The Board, in its April 12th decision, referred to section 62 of the Act and the anomalous result that would arise if the applicant were to be certified for the bargaining unit for which it holds bargaining rights under a collective agreement. The Board noted that if a union applying for certification under section 7(4) of the Act is certified (section 7(4) deals with applications for certification where a collective agreement has a term of three years or less), section 62(1) of the Act provides that the union that was party to the collective agreement "ceases to represent the employees in the bargaining unit determined in the certificate and the agreement ceases to operate in so far as it affects such employees." If the union obtaining certification in those circumstances is the same as the union that was the party to the collective agreement, it both ceases to represent the employees in the bargaining unit described in the collective agreement pursuant to section 62(1) and yet is entitled to represent those same employees as their exclusive bargaining agent pursuant to the certificate issued by the Board.

7. The applicant, in its submissions, does not address the anomaly the Board described. It submits:

Finally, the Board moots some inconsistency with section 62. Obviously, if a certificate is granted, the old agreement ends and the BACU is entitled to negotiate a new collective agreement with the employer. This is the same right the BACU would have without the certificate. Section 86 continues to apply until a new agreement is reached. There is no mischief arising out of the application of this section of the statute.

8. Although the intervenors had submitted in their intervention that this application should be dismissed because the applicant was seeking to certify itself, in reply to the submissions filed by the applicant, the intervenors, by their counsel, stated they agree with the submissions made by the applicant and concurred with the conclusion "that the Board has no discretion to refuse to certify a trade union seeking to certify itself provided that all other

requirements of the Act are complied with.” No submissions were received by any other party. Thus, the Board is left with the applicant’s request for certification supported by the intervenor with no opposition to that request.

9. The Board had noted in the decisions cited in its April 12th decision that the Act does not expressly preclude an applicant from seeking to displace itself and expand the scope of its bargaining unit. In none of those earlier decisions did the Board determine that a trade union could apply for certification for precisely the same bargaining unit for which it held bargaining rights under a collective agreement.

10. Trade unions have the right to apply for certification as the exclusive bargaining agent of employees in a bargaining unit in the construction industry or outside that industry by virtue of section 7 of the Act. The relevant portions of section 7 provide:

(1) Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, a trade union may apply at any time to the Board for certification as bargaining agent of the employees in the unit.

(2) Where a trade union has been certified as bargaining agent of the employees of an employer in a bargaining unit and has not entered into a collective agreement with the employer and no declaration has been made by the Board that the trade union no longer represents the employees in the bargaining unit, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit determined in the certificate only after the expiration of one year from the date of the certificate.

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties and the parties have not entered into a collective agreement and the Board has not made a declaration under section 66, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the recognition agreement only after the expiration of one year from the date that the recognition agreement was entered into.

(4) Where a collective agreement is for a term of not more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last three months of its operation.

...

(7) The right of a trade union to apply for certification under this section is subject to subsections 10 (3) and 11.1 (4), section 67, subsections 128.1 (10), (15), (21), (22) and (23) and subsection 160 (3).

Section 7(1) permits “a trade union” to apply for certification where no trade union has been certified and the employees are not bound by a collective agreement. Section 7(2) deals with the

situation where a trade union has been certified but has not entered into a collective agreement. In that circumstance, "another trade union" may apply for certification one year after the certificate was issued. Similarly, section 7(3) permits "another trade union" to apply for certification more than one year after a trade union and an employer have entered into voluntary recognition agreement.

11. Section 7(4) deals with situations where an employer and a trade union are parties to a collective agreement. Unlike sections 7(2) and 7(3) which provide that "another trade union" may seek certification, section 7(4) permits "a trade union" to apply for certification during the last three months of the collective agreement's operation. The term "a trade union" used in section 7(4) is also used in section 7(1), suggesting *any* trade union, including the trade union that is party to the collective agreement, may apply for certification. That was the analysis used by the Board in *Greater Essex County District School Board*, [2000] OLRB Rep. May/June 470 (May 2, 2000) at 476. Yet, to interpret section 7(4) as permitting the trade union party to the collective agreement to apply for certification as the bargaining agent of the bargaining unit for which it already holds bargaining rights under that collective agreement, particularly outside of the construction industry, would require the Board to conduct a representation vote in which the employees would have a ballot where their only choice is the applicant union. In our view, that result is absurd. While that absurdity may not arise in this application since it relates to the construction industry and is being dealt with under section 128.1 of the Act which permits the Board to certify the applicant without a representation vote provided the applicant has filed membership evidence on behalf of more than fifty-five per cent of the employees in the bargaining unit, the Board should be concerned with an interpretation of the Act that would lead to an absurd result in other circumstances.

12. We have already adverted to the difficulty that arises with respect to section 62 of the Act when the same union that is party to a collective agreement applies for certification in respect of the unit described in that collective agreement for which it is already the exclusive bargaining agent. Moreover, to permit that union to apply for certification permits one party to the collective agreement to obtain early termination of that collective agreement unilaterally, contrary to section 58(3) of the Act.

13. Nevertheless, as the Board has stated in several earlier decisions, there is nothing explicit in the Act that precludes an application for certification being filed in respect of employees in a bargaining unit described in a collective agreement by the trade union that is party to that collective agreement, provided it is filed in a timely fashion.

14. In these circumstances, where there is no opposition to the application, and despite our several reservations, the applicant in this case appears to be entitled by section 7(4) of the Act to have its application proceed, particularly where the Board has not had the benefit of any submissions to the contrary.

15. The Board, in its April 12th decision, noted the applicant and responding party agreed on the description of the bargaining unit. The applicant indicated the bargaining unit it proposed is the bargaining unit in its collective agreement with the responding party. In these circumstances, based on the representations of the applicant and on the agreement of the parties, the Board finds that all bricklayers, stonemasons and plasterers and their respective apprentices, improvers and working forepersons in the employ of the responding party in the industrial,

commercial and institutional sector of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, constitute a unit of employees appropriate for collective bargaining.

16. The applicant, in its application listed two jobs where employees were working on the application date: Canadian Tire, Lakeshore and Leslie, and a school addition in Mississauga, and asserted there were 8 employees in the bargaining unit. The responding party lists three jobs, two of which were listed by the applicant and the third being a condo project, 4159 Dundas St. West and submitted there were 16 employees in the bargaining unit.

17. On the basis of only the information provided in the application (including the information and membership evidence filed by the applicant) and the information provided under subsection 128.1(3) of the Act, the Board is not able to determine the percentage of employees in the bargaining unit who were members of the applicant as of the date the application was filed. The Board will determine that following a Regional Certification Meeting. Representations with respect to any status dispute must be made in accordance with the directions provided in Parts II, III and IV in Information Bulletin No. 9: Status Disputes in Certification Applications in the Construction Industry.

18. The responding party is directed to post copies of this decision in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit.

19. This matter is referred to the Manager of Field Services to conduct a Regional Certification Meeting.

2983-06-R Communications, Energy and Paperworkers Union of Canada Local 87-M Southern Ontario Newsmedia Guild, Applicant v. **Sun Media Corporation**; Sun Media (Toronto) Corporation; The London Free Press, A Division of Sun Media Corporation; and Sun Media Corporation c.o.b. as The Ottawa Sun, Responding Parties

Prima Facie Case – Related Employer – Sale of Business – The union sought a Board order consolidating its bargaining units of editorial employees as a result of the corporate restructuring and centralization initiatives undertaken by Sun Media's three newspapers – The responding parties asked the Board to dismiss the application under rule 39 – The Board found the staffing of non-union jobs in the Centres of Excellence with former bargaining unit employees did not constitute the sale of a business or part thereof – The Board then decided, assuming the responding parties were related employers, that there was no possibility it would grant the extraordinary remedy of bargaining unit consolidation for the following reasons: first, the consolidation would create a bargaining unit covering three municipalities, which runs contrary to the Board's usual practice; second, the union acknowledged the sharing of editorial content in the past and yet it has been content to organize on a newspaper by newspaper basis; third, the union can challenge the restructuring through grievances, an unfair labour practice complaint or in collective bargaining – Sale of business dismissed; declarations made

BEFORE: *Patrick Kelly*, Vice-Chair.

DECISION OF THE BOARD: June 26, 2007

1. This is an application under section 69 and/or subsection 1(4) of the *Labour Relations Act, 1995* as amended ("the Act").

2. The application is concerned with corporate restructuring and centralization initiatives undertaken by the responding parties in the newspaper industry, which the applicant (or "the union") contends have negatively affected its bargaining rights. By way of remedy the union seeks declarations that there has been a sale of business and that all editorial departments and/or divisions of Sun Media Corporation ("Sun Media") operating within Ontario, save and except for the editorial departments and/or divisions of any of the Sun Media chain's commuter or local dailies, are one employer for purposes of the Act. The union also seeks a Board order consolidating the union's bargaining units of editorial employees at The Toronto Sun, The London Free Press and The Ottawa Sun newspapers, and a declaration that all "corporate editorial" employees, except those excluded by virtue of subsection 1(3) of the Act, fall within the consolidated bargaining unit.

3. The responding parties move that the application ought to be dismissed on a preliminary basis, pursuant to Rule 39.1 of the Board's Rules of Procedure. Rule 39.1 reads:

39.1 Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all of the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing or consultation. In its decision, the Board will set out its reasons.

4. In essence, the responding parties contend that consolidation of bargaining units is not a remedy available to the Board to grant to the applicant, and as such, the application ought to be dismissed without a hearing.

5. All the parties were content to have the Board decide the preliminary motion on the basis of written submissions.

6. The provisions of the Act relevant to the preliminary motion are:

1. (4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

(5) Where, in an application made pursuant to subsection (4), it is alleged that more than one corporation, individual, firm, syndicate or association or any combination thereof are or were under common control or

direction, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation.

...

69. (1) In this section,

"business" includes a part or parts thereof; ("entreprise")

"sells" includes leases, transfers and any other manner of disposition, and "sold" and "sale" have corresponding meanings. ("vend", "vendu", "vente")

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights to which the employer is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application.

...

(6) Despite subsections (2) and (3), where a business was sold to person who carries on one or more other businesses and a trade union or council of trade unions is the bargaining agent of the employees in any of the businesses and the person intermingles the employees of one of the businesses with those of another of the businesses, the Board may, upon the application of any person, trade union or council of trade unions concerned,

(d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.

...

(12) Where, on any application under this section or in any other proceeding before the Board, a question arises as to whether a business has been sold by one employer to another, the Board shall determine the question and its decision is final and conclusive for the purposes of this Act.

(13) Where, on an application under this section, a trade union alleges that the sale of a business has occurred, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation.

The Facts

7. For purposes of dealing with the arguments of the responding parties, I must and I do assume, without deciding, that the applicant's allegations are true and provable. I am also at liberty to take into account any undisputed facts.

8. The relationship between Sun Media and Sun Media (Toronto) Corporation ("SMTC") is not clear on the pleadings. However, it appears that Sun Media operates, among other things, a chain of eight large urban daily newspapers ("the urban dailies")¹, and nine local dailies across Canada. The union represents editorial employees at three of the large urban daily newspapers in Ontario: The Toronto Sun, The London Free Press, and The Ottawa Sun. There appears to be no dispute that the union also represents certain editorial employees at one of the six Ontario local dailies, namely The Simcoe Reformer. The editorial employees of one other of the Ontario local dailies is represented by another trade union. The other four Ontario local dailies are non-union.

9. Of the three Ontario urban dailies, the applicant is party to one collective agreement with SMTC for all employees in SMTC's editorial department in the City of Toronto, save and except certain positions. That relationship is about four years old. There is one other collective agreement between the union and a Sun Media corporate division, The London Free Press, for all employees in Sun Media's editorial department in the City of London, save and except certain positions. The London bargaining unit has been in existence since 1989.

10. The application for certification in respect of The Ottawa Sun was filed on March 15, 2006 but not finally determined until February 23, 2007, when the Board certified the union for a unit (agreed by the parties) of employees of Sun Media Corporation c.o.b. as The Ottawa Sun in its editorial department, save and except certain positions, among them employees in the National Bureau (also known by the parties as the Parliamentary Bureau).² As of the date of this application there was no first collective agreement between the union and The Ottawa Sun.

11. The union contends that, until about a year prior to the filing of this application on December 12, 2006, the three urban dailies were operated as "fairly distinct entities". There was a wire service in place through which Sun Media newspapers frequently shared each other's editorial content, but each newspaper had full discretion as to the copy that would be included and as to the layout of the paper's pages.

12. Over the past year, the union says, Sun Media has been establishing a centralized structure over the three Ontario urban dailies. The restructuring has culminated in the elimination of a number of bargaining unit positions and the concomitant creation of a number of non-bargaining unit positions which have been filled with junior bargaining unit members, while more senior bargaining unit members have suffered layoffs.³

¹ Although Sun Media is said to operate all eight of the urban dailies, one of the collective agreements applicable to the Toronto Sun is between the applicant and SMTC.

² It would appear, however, that the union, in agreeing to the exclusion of the Parliamentary Bureau employees, did not agree that a bargaining unit including them would have been inappropriate, and further, that the union reserved the right, despite the agreement to exclude those employees, to maintain that they were properly the subject of any section 1(4) declaration by the Board in this application.

³ The union does not suggest that the summer and fall layoffs of 2006 (which, together with jobs left vacant, resulted in 77 lost positions across the three urban daily bargaining units) were improperly motivated or otherwise unlawful. However, the applicant

13. The union states that the centralization process has been carried out through the establishment of "Centres of Excellence" created by the responding parties. One such Centre of Excellence was a corporate graphics department, created in the fall of 2005, well before the layoffs. It established two new non-union positions, one of which, advertised as a Toronto position, was filled by a bargaining unit member from the London Free Press. That employee continued to work in London, at an office of one of Sun Media's local weeklies. According to the union, she was responsible for creating graphics for common use among various Sun Media publications. Her position in the bargaining unit was filled by another individual.

14. A second Centre of Excellence is the News Research Centre created shortly after the summer layoffs in 2006. According to the union, the News Research Centre is like a centralized archival library for the entire Sun Media chain of newspapers, whereas previously, each of the individual newspapers was responsible for its own archival/research function. Now, the Toronto bargaining unit does all this work. As a result of the change, two positions in each of the Ottawa and London bargaining units were eliminated, and four positions added to the Toronto bargaining unit.

15. The union describes a similar situation involving the assignment of a junior Toronto bargaining unit member to a new non-union position of gaming and technology writer for the Sun Media chain. That person, the union claims, would have been subject to layoff had he remained in the Toronto bargaining unit.

16. Perhaps most significant of all the restructuring changes is the creation on November 1, 2006 of a new corporate editorial department headed up by three editors-in-chief, a deputy managing director and a business editor from among the three Ontario urban dailies and the Calgary Sun. One of the purposes of this national editorial department is to streamline and consolidate the creation of news content, and pool resources, across the entire Sun Media chain. According to the union, the team of senior individuals who head up the new corporate editorial department will also each lead a separate Centre of Excellence within their area of responsibility. Furthermore, according to the union, two junior Toronto bargaining unit staff have been hired into non-union positions in the new department. Those individuals, the union says, would otherwise have been laid off.

17. By my count, based upon the union's pleadings, the Ottawa and the London bargaining units have lost two positions each to the restructuring. Those four positions ended up in the Toronto bargaining unit, which has lost three other positions as a result of the hirings in the new corporate editorial department.

Arguments

Of the responding parties

18. The position of the responding parties can be summarized as follows:

clearly is concerned that the centralization initiatives have effectively sheltered junior bargaining unit members while at the same time exposing more senior members to the brunt of the layoffs.

- Bargaining unit consolidation is not available through a section 1(4) application, and the Union has not presented any jurisprudence that would establish the contrary.
- The Board's consistent refusal to consolidate bargaining units is premised in the "spent certificate theory" which provides that the Board has no legal jurisdiction to redefine the scope of a bargaining unit once it has issued a certificate and the scope of the bargaining unit to which the certificate pertains has been further defined by the parties to a collective agreement.
- The facts alleged in the Application do not disclose a *prima facie* case for the exercise of Board discretion to declare a common employer. No labour relations purpose would be served by a finding of common employer by the Board, since any concerns that the Union has regarding the sourcing of editorial content should be resolved through a grievance or bargaining between the parties.
- In addition, the facts alleged in the Application do not disclose a *prima facie* case for the existence of a sale of business. There has been no transfer of an economic vehicle between the Responding Parties, and no intermingling of employees. Content sharing is consistent with the bargaining rights of the Union and provides no basis for the Union's claim that a sale of business has occurred.

19. In support of its position, the responding parties relied upon the following authorities: *BA International Inc.*, [2005] O.L.R.D. No. 1073, Board File No. 1363-04-M (February 28, 2005); *BA International Inc.*, [2004] O.L.R.D. No. 2200, Board File No. 1363-04-M (August 17, 2004); *Ontario Hydro*, [2005] O.L.R.D. No. 2012, Board File No. 0188-03-R (May 6, 2005); *Gilbarco Canada Ltd.*, [1971] OLRB Rep. Mar. 155; *Terra Nova Motor Inn Ltd. v. Beverage Dispensers & Culinary Workers Union, Local 835*, [1975] 2 S.C.R. 749; *Aro Equipment of Canada Ltd.* (1957), 57 CLLC ¶ 18,096 (OLRB); *City of Toronto Non-Profit Housing Corporation*, [1982] OLRB Rep. February 280; *Loeb (772685 Ontario Limited)*, [1995] O.L.R.D. No. 4597, Board File No. 1273-95-R (November 1, 1995); *McMaster University*, [2002] OLRB Rep. May/June 418 (June 19, 2002); *Durham Access to Care*, [2000] OLRB Rep. November/December 1108 (November 30, 2000); *Royal Taxi*, [1999] OLRB Rep. March/April 324; *Industrial-Mine Installations Limited*, [1972] OLRB Rep. December 1029; *National Grocers Co.*, [2000] O.L.R.D. No. 3257, Board File Nos. 1350-99-U, 2809-99-U (October 16, 2000), *aff'd* [2003] O.J. No. 5575 (Div. Ct.); *Loeb Inc.*, [1985] OLRB Rep. May 697; *City of Peterborough*, [1979] OLRB Rep. February 133 and *Toronto Star Limited*, [1972] OLRB Rep. December 995.

Of the applicant

20. The applicant states that for the purposes of dealing with the responding parties' preliminary motion to dismiss the application:

- the Board should only dismiss the instant application without a full hearing on the merits where it is certain that there is no reasonable likelihood of success on the basis of the facts set out in the application;
- the Board should not readily dismiss the application merely because it involves unusual or novel circumstances;
- the Board must decide the responding parties' motion on the basis of the facts as set out in the application; and
- the Board must assume that the responding parties carry on related activities under common control and direction

21. The applicant further contends that the "spent certificate theory" advanced by the responding parties to challenge the remedy of consolidated bargaining units has no application in a section 69 and subsection 1(4) proceeding. Moreover, bargaining unit consolidation is specifically provided for through subsection 69(6) of the Act i.e. the Board has the power to maintain or change the boundaries of existing bargaining units when the "businesses" of the predecessor and successor have been integrated and their work forces intermingled. The union contends that the facts disclose a sale of business or parts thereof of the three urban dailies to the Centres of Excellence, and intermingling of union and non-union employees.

22. Even if the Board does not accept that a *prima facie* sale of business has been made out, the union contends that consolidation of bargaining units is a remedy that may be available under subsection 1(4) in appropriate circumstances. In any event, whether or not consolidation of the bargaining units would be appropriate in this case, the union contends that there would nevertheless be a labour relations purpose in a declaration that the responding parties are one employer, in that such a declaration would prevent erosion of the applicant's bargaining rights by bringing employees in the newly created "Centres for Excellence" within the scope of the appropriate collective agreement.

23. In support of its submissions, the union referred me to the following authorities: *Quinte Crane Rentals Inc.*, [2005] O.L.R.D. No. 1493, Board File No. 3775-04-R (April 18, 2005); *Quinte Crane Rentals Inc.*, [2006] O.L.R.D. No. 918, Board File No. 3775-04-R (March 13, 2006); *PCL Constructors Eastern Inc.*, [1995] OLRB Rep. October 1277; *Industrial Mine Installations Ltd.*, [1972] OLRB Rep. Dec. 1029; *Aircraft Metal Specialists Ltd.*, [1970] OLRB Rep. Sept. 702; *Humber/Northwestern/York-Finch Hospital*, [1997] OLRB Rep. September/October 872; *Accomodex Franchise Management Inc.*, [1993] OLRB Rep. Apr. 281; *Metropolitan Parking Inc.*, [1979] OLRB Rep. Dec. 1193; and *Metroland Printing, Publishing & Distributing*, [1991] OLRB Rep. September 1069.

Analysis and Conclusions

24. To begin, I accept the union's submissions as described in paragraph 20 above concerning the principles that ought to apply in a motion of this kind.

25. I turn to the allegations concerning a sale of business.

26. In the oft-cited decision in *Metropolitan Parking Inc.* decision, an operator (the predecessor) of a unionized parking lot owned by a third party was displaced by another operator (the successor) through a competitive bidding process. The successor placed advertisements to hire staff, and ended up hiring a substantial number of the predecessor's union and non-union employees. Those employees essentially continued on with the successor in the same positions and using the same tools and equipment (owned by the third party). The union argued that the business of operating the parking lot had been transferred from the predecessor to the successor, thus constituting a sale of business.

27. The Board carefully and methodically reviewed the history and purpose of, as well as the jurisprudence flowing from, the sale of business provisions. The Board recognized that the term "business" in the Act must by necessity have a very broad meaning in order to capture the extensive range of economic activities contemplated by the statute, and that the particular elements of what constitutes a business will vary depending on the type of industry, environment or context in which an entity or enterprise operates. That being said, the Board was able to describe the organic qualities of any business, as "a combination of physical assets and human initiative...a *dynamic* activity, a 'going concern', something which is 'carried on'...an organization about which one has a sense of life, movement and vigour" (§ 30, emphasis in original).

28. The Board ultimately determined that the re-employment of some of the predecessor's employees by the successor was not sufficient to establish a transfer of the predecessor's business, or part thereof, to the successor. At paragraph 44 of the decision, the Board stated:

For a transaction to be considered a "sale of business" there must be more than the performance of a like function by another business entity. There must be a transfer from the predecessor of the essential elements of the business as a block or as a "going concern." A business is not synonymous with its customers or the work it performs or its employees. Rather, it is the economic organization which is used to attract customers or perform the work. The Legislature could have provided for the continuation of bargaining rights whenever there is a continuity of the work performed, but it did not do so. Bargaining rights are continued only when the employer transfer *his* business. The use of the active verb and possessive pronoun is not insignificant.

29. It is difficult to identify in this application what has allegedly been transferred to the Centres for Excellence, other than a very small number of bargaining unit members who, it would appear, voluntarily left their bargaining unit positions for the opportunity to apply their skills in a new environment. No event has been alleged in the application to have occurred that could be construed as a sale of business necessitating the intervention of the Board, nor has the union raised any issue as to who is the "real employer" of the employees in the bargaining unit. In any event, assuming without deciding that something has been transferred to the Centres for Excellence, the question remains, could it constitute a business or a part thereof, that is "a combination of physical assets and human initiative...a *dynamic* activity, a 'going concern', something which is 'carried on'...an organization about which one has a sense of life, movement and vigour"? In my view, the staffing of non-union jobs in the Centres for Excellence with former bargaining unit employees and their expertise does not constitute the sale of a business or part thereof. The union's pleadings, taken at their highest, simply do not make out a case of a

sale under section 69 of the Act. Since nothing has been sold, transferred or otherwise disposed by the responding parties to the Centres for Excellence, there is no need to consider the application of subsection 69(6)(d) which confers a discretion on the Board to amend bargaining units where certain prerequisites are satisfied.

30. This brings me to the common employer allegation. Assuming without deciding that the responding parties carry on related activities under common control and direction, and assuming without deciding that the Board has the jurisdiction under subsection 1(4) to consolidate bargaining units, the question to be decided is whether or not the Board would exercise its discretion to make a declaration and the orders requested by the union.

31. The union places particular significance on the Board's decision in the *Quinte Crane Rentals Inc.* decision. In that matter, the trade union alleged a sale of business by Quinte Crane Rentals Inc. ("Quinte") to C. A. Peters Crane Rentals Inc. ("Peters"), and alternatively, that Quinte and Peters were a common employer. The material facts relied upon by the trade union were as follows. The trade union had previously permitted three junior employees of Quinte to work for Peters and issued clearance cards to them to do so provided that no senior employee would be displaced as a result. Pursuant to a merger between Quinte and Peters, three senior employees of Quinte were subsequently terminated contrary to the arrangement between the parties, and the trade union alleged that the reason was the trade union's attempt to enforce the wage provisions of the Provincial collective agreement as against both Quinte and Peters.

32. Peters admitted it was bound to the Provincial collective agreement, as submitted by the trade union. In those circumstances, the Board asked the trade union to say what labour relations purpose would be served in making a finding of a sale of business, or why a single employer declaration was necessary or appropriate.

33. In response to the trade union's submissions, the Board refused to dismiss the sale of business portion of the application because it could not be certain that it would refuse to exercise its discretion under section 69(6)(b) to determine that the employees of Peters and of Quinte constituted a single bargaining unit.

34. With respect to the single employer declaration, the trade union asserted that such a declaration was necessary to preserve the seniority rights of employees by, in effect, combining the discrete bargaining units of both responding parties into a single unit.

35. The Board found that it could not conclude that there was no reasonable likelihood it would grant a single employer declaration in those circumstances. The Board reasoned that the transaction between Quinte and Peters which resulted in the loss of the senior employees' jobs might cause the Board to find it appropriate to issue a single employer declaration.

36. As noted in its submissions of counsel for the responding parties, the facts in the *Quinte* decision pertaining to the merger transaction between Quinte and Peters do not resemble the facts in this matter. There is no allegation in this proceeding of a merger of the responding parties' editorial departments. Still, the reason advanced for the filing of the application in the *Quinte* decision is similar to the rationale offered in this proceeding i.e. the protection of seniority rights. In this case, the union, like the applicant in *Quinte*, is claiming that, through artificial means, the responding parties are avoiding what would otherwise be the impact of seniority rights

under the respective collective agreements. It seems to me that, in such circumstances, it is not possible to conclude there is no reasonable likelihood the Board might exercise its discretion under subsection 1(4) to make a common employer declaration.

37. Having said that, it bears pointing out that the Board in the *Quinte* decision did not go so far as to admit any possibility of the Board ordering the consolidation of the two bargaining units under subsection 1(4) of the Act. All that was decided as far as subsection 1(4) was concerned was that the Board could not rule out the possibility of a single employer declaration.

38. In my view, there is no possibility in the circumstances of this case that the Board would grant the extraordinary remedy of bargaining unit consolidation. The reasons are three-fold. First, consolidation of the bargaining unit, would create one bargaining unit covering the employees of three different municipalities. This runs contrary to the Board's usual practice of defining a bargaining unit by reference to a single municipality. The Board's practice (outside of the construction industry) is not to include employees in widely separated municipalities, such as these, unless there are compelling circumstances, such as integration of operations and regular interchange of employees, or a group of employees would otherwise be deprived of the right to bargain collectively. These principles are not cast in stone, but the union in this matter has not provided a sufficiently compelling case to justify the unusual bargaining unit configuration it seeks through consolidation.

39. Secondly, the union admits in its application that the newspapers operated by the responding parties have frequently shared each other's editorial content. Moreover, nowhere in the applicant's reply to the submissions of the responding parties does it directly take issue with the assertions of the responding parties that the Sun Media chain of newspapers has always been under the oversight of a corporate editorial board that coordinates the publication of the newspapers in the Sun Media chain.¹ In other words, there is an acknowledgement by the union of at least *some* aspects of centralization in the operations of the three newspapers in question, even though, according to the applicant, they operated until recently as "fairly distinct entities". Implicit in that assertion is that the responding parties were never completely distinct, stand-alone entities. Nevertheless, the union has been content to organize the editorial employees on a newspaper-by-newspaper basis.

40. Thirdly, the union has the means to challenge the restructuring through the grievance process or by filing an unfair labour practice complaint, or to seek reconfiguration of the bargaining units through collective bargaining. In fact, with respect to the Ottawa bargaining unit, the union very recently agreed, on a without prejudice basis, to a unit excluding the editorial employees in the National Bureau, all the while openly contemplating a section 69/1(4) application where it would argue for their inclusion in a consolidated unit. This is a strategy the Board ought not to countenance because it tends to discourage resolution of highly significant labour relations issues to the parties *by* the parties, and encourages litigation and uncertainty. As was pointed out in paragraph 6 in *BA International Inc.*, [2005] O.L.R.D. No 1073, Board File

¹ The application refers, at paragraph 31, to the "creation of a new national editorial team" on November 1, 2006. In their response at paragraph 37, the responding parties acknowledge "the current formulation of the Corporate Editorial Board" as described by the union, but asserts that there has always been a corporate editorial board with oversight responsibility for the coordination of the publication of newspapers across the Sun Media chain. Although the union takes issue with general assertions by the responding parties that the applicant was aware of the corporate and bargaining structure of the responding parties before it made the applications for certification in respect of the Toronto and Ottawa units, and asserts, contrary to the responding parties' characterization, that the corporate restructuring has been a recent, fundamental and significant departure from the way in which the newspapers have operated, it does not deny the pre-1996 existence of a corporate editorial board.

No. 1363-04-M (February 28, 2005), the Board has consistently declined to exercise the power to consolidate bargaining units because that is more appropriately an exercise in which the parties themselves should be engaged. In paragraph 11 of the *BA International Inc.* decision¹ the Board stated:

In my opinion, the labour relations community, in general, has benefited from the freedom to craft appropriate bargaining units, in response to the addition of new work functions or a new location for a manufacturer, or the "downloading" of a new service to a municipality, to give a couple of examples.

41. In my view, the same considerations apply when the work in question is affected by restructuring of the kind we see in this application. The parties are in the best position to deal with such a change. In matters relating to the amendment of established bargaining unit descriptions, the Board should be reluctant to enter the fray, even if it has the jurisdiction to do so.

42. For these reasons, I would not grant the union the remedies it seeks with respect to consolidation of the bargaining units. However, as I have said, the application as pleaded does not preclude the possibility that the Board would grant a common employer declaration. Therefore, the union is entitled to pursue that remedy.

43. This matter is referred to the Registrar for the scheduling of a hearing.

0967-06-U York University Staff Association, Applicant v. **York University**, Responding Party

Prima Facie Case – Related Employer – Sale of Business – The union sought a Board order consolidating its bargaining units of editorial employees as a result of the corporate restructuring and centralization initiatives undertaken by Sun Media's three newspapers – The responding parties asked the Board to dismiss the application under rule 39 – The Board found the staffing of non-union jobs in the Centres of Excellence with former bargaining unit employees did not constitute the sale of a business or part thereof – The Board then decided, assuming the responding parties were related employers, that there was no possibility it would grant the extraordinary remedy of bargaining unit consolidation for the following reasons: first, the consolidation would create a bargaining unit covering three municipalities, which runs contrary to the Board's usual practice; second, the union acknowledged the sharing of editorial content in the past and yet it has been content to organize on a newspaper by newspaper basis; third, the union can challenge the restructuring through grievances, an unfair labour practice complaint or in collective bargaining – **Sale of business dismissed; declarations made**

BEFORE: Mary Anne McKellar, Vice-Chair, and Board Members Richard O'Connor and D. A. Patterson.

¹ Upheld on judicial review: see *BA International Inc. v. Ontario (Labour Relations Board)* [2005] O.J. No. 5211

APPEARANCES: *Tim Gleason, Joanie Cameron Pritchett, Giulio Malfatti and Randy Slepchik* appeared for the applicant; *John Brooks, Norm Ahmet and Barry Miller* appeared for the responding party.

DECISION OF MARY ANNE MCKELLAR, VICE-CHAIR, AND BOARD MEMBER RICHARD O'CONNOR; June 4, 2007

Introduction

1. This is an application under section 96 of the *Labour Relations Act, 1995* ("the Act"). The applicant trade union ("YUSA") alleges that the responding party ("the University") unlawfully interfered with its administration and with its representation of employees contrary to section 70 of the Act, when it refused to provide YUSA with the names and addresses of persons who retired from the University in 2003 and 2004, but who had been, immediately prior to their retirement, employed in the bargaining unit represented by YUSA.

Facts

2. There is no material dispute on the facts giving rise to this complaint.

3. YUSA has been the bargaining agent for a group of employees at the University since the mid-1970's. Those employees are eligible, along with all other persons employed by the University, to participate in a pension plan ("the Plan"). The current collective agreement between the parties contains the following provisions respecting the Plan:

Article 29.04 **PENSION PLAN**

- (a) Employees who work more than fourteen (14) hours per week but less than twenty-four (24) hours per week with no termination date anticipated at the time of the appointment shall be notified of eligibility to participate in accordance with the terms of eligibility contained in the Pension Plan, when they have completed two (2) years of employment, where they have worked more than seven hundred and fifty (750) hours each year.
- (b) For the purposes of this Agreement, Pension Plan shall mean the York University Pension Plan, as approved and amended from time to time by the Employer.
- (c) Employees shall be required to participate in accordance with the terms of eligibility contained in the Pension Plan.
- (d) The Employer agrees to place two (2) representatives, designated by YusApuY, on the Board of Trustees of the Pension Plan.
- (e) The Employer agrees to continue an All-University Committee representing the different groups of participants in the York Pension Plan (including pensioners and the Board of Trustees of the York Pension Plan) to discuss changes to the York Pension Plan and report back periodically to their constituencies

4. In addition, YUSA's collective agreement contains provisions concerning certain other post-retirement benefits, as set out in Article 29.05:

Employees who work more than fourteen (14) hours per week but less than twenty-four (24) hours per week with no termination date anticipated at the time of the appointment are not entitled to post-retirement benefits.

The Employer agrees to continue the retiree benefits coverage on the August 1992 basis until June 30, 2008 as outlined in **Appendix C,1 – Post Retirement Benefits**.

[emphasis in original]

Appendix C,1 spells out in considerable detail the post-retirement benefits provided.

5. YUSA and York do not negotiate the provisions of the Plan. To the extent that these are discussed or negotiated with eligible participants, such discussions occur at the All-University Pension Committee ("AUPC"). The AUPC comprises representatives of all the active employee groups (unionized and non-unionized) in the University as well as a group representative of retirees, the York University Retirees' Association ("YURA").

6. The York University Faculty Association ("YUFA") represents faculty members at the University. Faculty members are also eligible for enrolment in the Plan. YUFA has initiated a proceeding with the Financial Services Commission of Ontario ("FSCO"), which relates to an alleged discrepancy between "pensions paid" and "pensions payable" under the Plan. It appears that a potential outcome of this dispute is that retirees entitled to pension payouts under the Plan will see an enhancement of those amounts, and as a corollary, current contributors to the Plan may see their contributions increase in order to fund those enhanced amounts. No retiree faces the prospect of a decrease in his or her pension payouts as a consequence of the FSCO proceeding. YUFA began exploring the "paid" versus "payable" pension issue sometime in 2001 and initiated the FSCO proceeding in February 2003. YUSA is not a party to the FSCO proceeding.

7. The University met with representatives of its active employee groups to discuss the FSCO proceedings. Its meeting with YUSA was held on March 23, 2006, and consisted of a power-point presentation generic to all employees and not specifically aimed at persons represented by YUSA. In this presentation, the University adverts to the possibility that a negotiated resolution to the FSCO matter might be achieved, but specifically notes its view that the trade unions representing its active employees could not bind retirees or non-unionized employees to a negotiated settlement, and that a class action settlement would be required to bind such individuals.

8. The discussions between the University and YUSA with respect to the FSCO matter prompted YUSA to ask the University for a list of the names of YUSA members who retired in 2003 and 2004, including any contact information, specifically in the form of home addresses or telephone numbers ("the Contact Information"). Pursuant to Article 6.03 of the collective agreement between YUSA and the University, the latter is obliged to update YUSA on a monthly basis of changes in employment status and contact information. Article 6.03 reads:

- 6.03** YusApuy shall be advised each month of all persons hired, changes in classification (including temporary promotions), transfers between departments, terminations, addresses and sex of new persons hired, changes of names, addresses and retirements from the previous month. This list will also include the individuals' band level, regular salary and total compensation paid for work in the bargaining unit. The list shall be provided in both printed and electronic form.

Parties' Positions

9. YUSA contends that: (1) it has bargained provisions in the collective agreement conferring rights on retirees; (2) that the grievance process is the only vehicle for the enforcement of those rights; (3) that it owes a duty of fair representation to the retirees, either at common law or under the Act; (4) that the information it seeks is necessary to enable it to fulfill that duty; and (5) that the refusal of the University to provide it therefore interferes with its administration and representation of "employees", which term it contends includes retirees for the purposes of section 70 of the Act. YUSA's book of authorities included the following: *Co-Fo Concrete Forming Construction Limited*, [1987] OLRB Rep. Sept./Oct. 1213; *Millcroft Inn Ltd.*, [2000] OLRB Rep. July/August 665 (August 25, 2000); *Ottawa-Carleton District School Board*, [2001] O.L.R.D. No. 4575; *Alcohol and Gaming Commission of Ontario*, [2002] OLRB Rep. January/February 1 (January 11, 2002); *Canadian Niagara Hotels Inc.*, [2005] O.L.R.D. No. 5224, Board File No. 2004-05-U (December 23, 2005); *E.S. Fox Ltd.*, 2006 CanLII 468 (OLRB); *Dayco (Canada) Ltd. v. National Automobile, Aerospace & Agricultural Workers Union of Canada* (1990), 74 O.R. (2d) 648 (C.A.), and [1993] 2 S.C.R. 230; *Tremblay v. Syndicat des employés et employés professionnels-les et de bureau, section locale 57*, [2002] 2 S.C.R. 627; *Re Bouchard*, [2003] C.I.R.B. No. 259; *Association provinciale des retraités d'Hydro-Québec v. Hydro-Québec*, [2005] Q.J. No. 1644 (C.A.); *Bisaillon v. Concordia University*, [2006] S.C.J. No. 19; *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27; *Canada (Attorney General) v. Abrahams*, [1983] 1 S.C.R. 2; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559; and *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, [2004] S.C.J. No. 51 (July 29, 2004).

10. The University contends that: (1) retirees are not "employees" under the Act, either for the purposes of section 70 or for the purposes of the duty of fair representation; (2) the Plan and its terms are not part of the collective agreement nor the subject of negotiation between YUSA and the University; and (3) the refusal to provide the requested information does not therefore interfere with YUSA's administration or its representation of employees. The University's book of authorities comprised the following: *Cominco Co. Pensioners Union*, [1979] 2 C.L.R.B.R. 322 (B.C. LRB); *Re Liquor Control Board of Ontario et al and Ontario Liquor Board Employees' Union* (1980), 29 O.R. (2d) 705 (Div. Ct.); and *Bohemier v. Centre Gas Manitoba*, [1999] M.J. No. 68 (C.A.).

Analysis

11. The Board has in the past directed employers to provide employees' personal contact information to a trade union. It has never done so except with respect to current (as opposed to former) employees. Sometimes such direction has been made to remedy the effects of an unfair labour practice. We are not concerned with that situation in this application. In other circumstances, the Board has determined that an employer's refusal to provide the information in

and of itself amounts to an unfair labour practice, specifically, a contravention of section 70. This is, of course, YUSA's position in this case. We note that anti-union animus is not a necessary element of a contravention of section 70, and furthermore, that there is no allegation of anti-union animus on the part of the University.

12. Section 70 provides as follows:

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

13. For the purposes of this proceeding, the University concedes that it would contravene section 70 if it refused to provide YUSA with Contact Information for employees in the latter's bargaining unit. But the University asserts that retirees are not "employees" under the Act and therefore refusing to provide their Contact Information does not interfere with the administration of YUSA or its representation of employees.

14. Certainly the Board has typically predicated its conclusion that it is a contravention of section 70 to withhold contact information for employees on the fact that the trade union enjoys exclusive representation rights and concomitant obligations for those employees. The following passage from *Co-Fo Concrete Forming Construction Limited* is illustrative of this line of reasoning:

28. ...Once certified with respect to a bargaining unit, a trade union is the exclusive bargaining agent of and for all of the employees who fall within that unit from time to time, not just the employees who wish to be represented by it. With that right comes the obligation to fairly represent all the employees in the bargaining unit, both in collective bargaining and in the administration of any collective agreement. It necessarily follows that it has both the right and the need to know the names and existing terms and conditions of employment of each of those employees.

29. ...In making informed decisions and effectively performing its statutory responsibilities, information from the employees it represents can be as important to the trade union as the information the employer supplies. A trade union may need to communicate with some or all of the employees in the bargaining unit, including non-members of the union, in order to properly represent their interests: to get their input, to verify information supplied by the employer or to give notice of a strike or ratification vote (see ss. 72(4), (5) and (6) of the Act), for example. Information about how bargaining unit employees can be contacted is, thus, information to which the union is *prima facie* entitled.

30. It is hard to imagine what employer interest in such information could outbalance the union's interest in the addresses and telephone numbers of the persons for whom it has the right and obligation to act as agent. In any event,

it is unnecessary to speculate about whether there are some kinds of needed information which an employer is entitled to withhold because of countervailing interests: this employer identified no such purported countervailing interest, nor did it deny having any of the information sought – it simply presumed to make its own assessment of the union's need for the information. It is not for an employer to assess how much such information is or is not needed by its employees' exclusive bargaining agent in order to properly represent those employees in bargaining.

15. In *Millcroft Inn Ltd.*, the Board also noted that, in addition to duties deriving expressly from the Act, trade unions may also have obligations to employees as a consequence of judicial pronouncements preferring the arbitration process as a means of resolving all disputes relating to matters arising from a collective agreement. The relevant passage is found at paragraph 28 of that decision:

28. The *Weber* case [*Weber v. Ontario Hydro* (1995), 125 D.L.R. (4th) 583 (S.C.C.)], and those following its direction ... have significantly expanded the scope of the arbitrability of disputes arising in workplaces which are governed by a collective agreement. Even if the cause of action does not arise expressly from a collective agreement, the ratio of *Weber* is that, if it is a dispute between an employer and an employee and it appears that the dispute arises inferentially or essentially from the collective agreement which governs them, then the dispute is to be arbitrated, rather than determined in the ordinary courts. Unions have inadvertently acquired a huge area of litigious responsibility which they might not have contracted for under collective agreements....

16. At the risk of over-simplifying, the proposition that emerges from the Board's case law is that section 70 prohibits an employer from acting in a way that interferes with or hinders a trade union's ability to represent those persons it is legally charged with representing. This begs the question of whether YUSA can be considered to be legally charged with representing the retirees.

17. The parties both focussed on the question of whether retirees are "employees" for at least some purposes of the Act. We do not find it necessary to answer that question to dispose of this application.

18. Trade unions may bargain for and collective agreements may contain provision for benefits to be enjoyed by persons who retire from the bargaining unit. The British Columbia Labour Relations Board recognized this fact in *Cominco*, and while it did not persuade the BCLRB that retirees could be considered employees and be the subject of a certification application under the BC legislation, it noted that the obligation on the employer to provide negotiated benefits to retirees in accordance with the applicable collective agreement(s) might be enforced at the instance of the trade union through arbitration proceedings. The reasons of the majority of the Supreme Court in *Dayco* also support this proposition, although there is a suggestion in paragraph 44 of those reasons that retirees themselves might initiate some action to secure the payment of health benefits promised to them in the collective agreement in force at the time of their retirement. It is important to note that the *Dayco* decision relates only to such benefits, which, unlike pension benefits in most Canadian jurisdictions including Ontario, do not become vested by operation of statute, and the only question that was, strictly speaking, before

the Court was whether the arbitrator in *Dayco* had jurisdiction to entertain a grievance relating to post-retirement health benefits that was filed after a collective agreement expired. The majority spends a considerable amount of time commenting on American jurisprudence relating to the vesting of health and welfare benefits and then considers, with approval, some Canadian case law, including the *Cominco* decision, before concluding as follows:

88. To summarize, I am of the view that retirement rights can, if contemplated by the terms of a collective agreement, survive the expiration of that agreement. Moreover, although it is not strictly necessary to decide the point of this appeal, I would also find that these surviving rights vest at the time of retirement, and would survive subsequent collective bargaining that purported to divest such rights. As such, I have concluded that the arbitrators' general propositions in this respect were correctly stated, and the arbitrator had justification to hear the union's grievance. Of course, I make no comment on whether the terms of the agreement between the company and the union do in fact create such a vested right. That is a question for the arbitrator to decide when the arbitration hearing proceeds on the merits.

19. *Weber* and the line of cases following it hold that any dispute whose essential character arises from the interpretation, application, administration or violation of the collective agreement is within an arbitrator's exclusive jurisdiction. There have been many decisions dealing with the question of whether disputes relating to benefit plans must be litigated through arbitration. The outcome of these cases has depended on whether the dispute relates to: (1) an obligation undertaken by the employer pursuant to the collective agreement, whether that be to pay premiums or to fund and administer the benefit plan; or (2) the performance of a third-party contractor, such as an insurer, that makes decisions relating to receipt of benefits. If the former, the dispute is to be resolved by arbitration, so long as in the case of benefits entitlement questions, the collective agreement is sufficiently specific with respect to what benefits have been promised. If the latter, it may be the subject of a court action. The following list of cases is not meant to be exhaustive, but is indicative of how frequently this issue has arisen over the last few years: *Perlett Estate v. Riverside Health Care Facilities Inc.*, [2005] O.J. No. 2704 (May 16, 2005) (C.A.); *Andova v. Sun Life Assurance Co.*, [2005] O.J. No. 329 (January 21, 2005) (Ont. Master); *Sun Life Assurance Co. of Canada v. National Automobile, Aerospace, Transportation and General Workers Union of Canada*, [2000] O.J. No. 2608 (July 13, 2000) (C.A.); *International Woodworkers of America, Local 2693 v. Longlac Wood Industries Inc.*, [2000] O.J. No. 2607 (July 13, 2000) (C.A.); *Hamilton v. ICI Canada Inc. (c.o.b. ICI Autocolor)*, [2001] O.J. No. 3916 (October 5, 2001) (S.C.J.); *London Life Insurance Co. v. Dubreuil Brothers Employees Assn., a Division of IWA Canada, Local 2693* (2000), 49 O.R. (3d) 766 (C.A.); *Duke v. Toronto District School Board*, [2006] O.J. No. 1983 (April 28, 2006) (S.C.J.); and *Morris v. Manufacturers Life Assurance Co.*, [2005] O.J. No. 712 (February 24, 2005) (S.C.J.). All of these cases, with the exception of *Perlett Estate*, concerned individuals with a subsisting employment relationship with their employers and dealt with the question of whether those individuals could or should initiate a civil action, or whether their claims must be dealt with through arbitration. *Perlett Estate* involved a negligence action by the estate of a deceased employee against her former employer who had allegedly not adequately informed her of the availability of enhanced life insurance coverage, and the court, not surprisingly, found that this was a matter that arose independent of the collective agreement. The cases do not therefore address the issue of whether a benefits claim that would fall within the exclusive jurisdiction of an arbitrator if litigated on behalf of a *current* employee, also falls within an arbitrator's exclusive jurisdiction when that claim arises in respect of a *former* employee.

20. Essentially YUSA argues that if any benefit enforceable for current employees on the *Weber* analysis only through arbitration is promised to retirees, then that benefit can only be enforced for them through arbitration as well, and YUSA must be their agent to enforce it. The consequence, in YUSA's submission, is that the University's denial of the Contact Information for retirees impedes its ability to do so, and therefore unlawfully interferes with, if not its representation of "employees", then the administration of the union itself.

21. We think that it is certainly possible that a court or arbitrator, reviewing *Dayco*, *Weber*, and the other benefits cases referred to in paragraph 23 above, might conclude that at least certain benefits promised to retirees in the collective agreement are enforceable only through the arbitration process, of which YUSA has carriage. While this may not be as likely a conclusion with respect to pension benefits, which are governed by a separate third-party contract and which are subject to statutory vesting provisions and under the purview of the regulating bodies, it is a possible conclusion with respect to these retirees' post-retirement health benefits which are spelled out in some detail in an Appendix to the collective agreement and which give every appearance of being both University-funded and administered (whether through an agent or not). So long as it is arguable that YUSA may have the obligation, or at the very least, the right to pursue a grievance respecting the continued provision of such benefits to retirees in accordance with the collective agreement provisions, we think YUSA has made out a case that the denial of the information to it amounts to an interference with its administration, contrary to section 70.

22. Despite the fact that the issue of the disclosure of the Contact Information at issue here crystallized in the context of the FSCO proceedings, and despite the fact that YUSA may not be charged with representing retirees in connection with pension benefits, the very possibility that YUSA might be charged with enforcing the other post-retirement benefits entitles it to the information. The University's rationale for not disclosing the information related to the privacy interests of retirees. We do not want to minimize those concerns, but in view of the fact that the collective agreement entitles YUSA to names and addresses of current employees (and any changes to that information), as well as lists each month of those who have retired, it is not apparent to us that the privacy expectations of the retirees are such that they would reasonably feel their privacy had been violated if this information were provided to YUSA. We further note, that, in a situation where the individuals' privacy expectations must have been much higher because the collective agreement required their consent before contact information could be given to their bargaining agent, the Board nevertheless determined that it was a contravention of section 70 for the employer to deny it. See *Canadian Niagara Hotels* supra.

23. It is therefore our determination that the University contravened section 70 of the Act when it denied YUSA the Contact Information for the retirees. We direct that that information be provided to YUSA within 30 days of the date of this decision, or such longer time as the parties may agree to.

CONCURRING OPINION OF BOARD MEMBER D. A. PATTERSON; June 4, 2007

24. I concur with the majority decision in our findings in this matter.

25. However, I unlike the majority, would choose to expand more explicitly, on the logic and reasoning behind the majority decision

26. I would hold that the reasoning behind requesting all and any information pertaining to pension and benefits for active employees and retirees is crucial for any bargaining agent to fulfill its legislative and contractual obligations.

27. The benefit and pension plans respectively are part and parcel of the Collective Bargaining process, and without the actuarial or experience ratings, the bargaining agent potentially has to make decisions in a bargaining vacuum.

28. In today's world of collective bargaining, any bargaining agent must ensure that benefits and pension plans are sufficiently funded without shortfalls or liabilities to the bargaining agreement, to its members and those retirees who took advantage of the retirement plans and benefits while they were active employees.

29. In the last number of years there has been a move to scale back benefits and co-pay issues of retirees due to employer's cash flow problems and their ability to meet the spiralling impact of increased costs to benefits. This issue has resulted in protracted strikes and prolonged negotiations over the said issue.

30. Addressing the pension benefit level, the amount of liability, which is unfunded is staggering in its proportions. When there are shortfalls in any plans, the options to address such shortfalls can be devastating to those retirees on a fixed income. Without the information sought in the instant case, bargaining determinations to address any potential funding issues cannot be addressed.

31. Long gone are the days when employers could simply state benefit and pension matters are the domain of the employer exclusively, that approach is just not acceptable for all the above reasons and possibly more plausible reasoning I have not addressed and /or elaborated on. That would be more of a philosophical debate best left to those in a position to make these comments.

32. Both these parties have a mature relationship, there can be no labour relations purpose served by both not being totally open about the process. Both have a common interest in ensuring monies spent in bargaining and negotiated benefits and pensions are based on the least and most comprehensive information available to make those crucial decisions.

0492-07-R Mark Jones, Applicant v. Universal Workers Union, L.I.U.N.A., Local 183, Responding Party v. Yorkwood Homes, Intervenor

Construction Industry – Practice and Procedure – Termination – Timeliness –
The application was received by the Board on May 4, 2007, having been delivered to a courier on May 2, 2007 – The Board held that as a rule an application is filed on the day the Board actually receives it, the only exception occurring in the construction industry where certifications and terminations given to Priority Courier will be deemed to have been filed on the date they were given to the courier (Rule 24.2) – The applicant in the present case gave his application to a different courier – The Board was not prepared to extend the exception beyond the one contemplated in the Rules – Application dismissed

BEFORE: *David A. McKee*, Vice-Chair.

DECISION OF THE BOARD: May 29, 2007

1. This is an application for termination of bargaining rights brought pursuant to sections 63 and 132 of the *Labour Relations Act*, 1995, S.O. 1995, Ch. 1, as amended (the "Act"). The question is whether the Board ought to make an exception to its rules for the purpose of this application.

2. The application was received by the Board on May 4, 2007. An application of any sort is filed or made under the Act only on the day the Board actually receives the application, with one exception. Applications for certification and termination of bargaining rights in the construction industry will be deemed, if they have been sent to the Board by Canada Post's Priority Courier, to have been made on the date they were delivered to Priority Courier. In this case the applicant, Mark Jones, delivered the application to the Board using UPS Courier services. It was delivered to all of the other parties before that date.

3. It is apparently common ground that if the application was filed on May 4, 2007, it is untimely and must be dismissed. The applicant and the intervenor ask the Board to make an exception to its rules and to deem the application to have been filed on the date it was delivered to UPS Courier. Although the matter seems to be a trivial one, it is not, and I decline to create another exception other than the one contemplated in the Rules.

4. The Board's choice of Canada Post's Priority Courier is not a frivolous one nor is it simply a preference for one commercial carrier over another. It is connected to and part of Canada Post, a public institution. It therefore has a reliability that such status gives it. The Board is also not prepared to engage in a process of determining which private courier companies it "trusts" and which it does not. The Board is simply not capable of doing so, and should not, as a public body itself, be engaged in passing judgment on commercial enterprises.

5. The intervenor suggests there is no prejudice to the trade union. I disagree. The dates of the triennial "open period" are well known to unions in the construction industry. Vast resources are drawn away from a union's normal activities into patrolling job sites and following rumors anticipating displacement applications and terminations. Although Mr. Jones asserts that he delivered it to the Union on April 28, 2007, the Union's response asserts otherwise and further that it is unable to determine the application date from the material filed.

6. The deadline for filing this application is created by the Act, not the Board's Rules. The Rules simply provide how applications are to be brought in a timely manner. Because of the nature of work in the construction industry, the Rules create a limited exception to the normal rule with respect to filing, and the applicant has not followed it. According to his certificate of delivery, he gave the application to UPS courier to deliver to the Board on May 2, 2007, two days after the end of the "open period". He has provided no explanation for why he did so other than to say that the Board's Rules are complex and difficult for him to follow.

7. The Board will be invariably reluctant to grant an extension of time to file an application where the dates of the "open period" are concerned. Indeed, in *Associated Contracting Inc.*, [1998] OLRB Rep. Nov./Dec. 903 in very similar circumstances, the Board

declined to extend it by a similar short period. In this case, the applicant apparently knew the Rules and was aware of the importance of the dates. He chose not to seek assistance during the period from February 1, 2007 to April 30, 2007 during which this application could have been filed in a timely manner. He simply erred in making the application, and indeed, commenced the process after it was timely to do so. He did so because of his own error, not because of circumstances beyond his control or because some other party misled him in any way. I therefore decline to create a further exception in the Rules to benefit this one individual.

8. This application was filed after the time permitted by the Act and the Board's Rules, and is therefore untimely. It is dismissed for that reason.

COURT PROCEEDINGS

4179-05-U; 4307-05-M (Court File No. 202/06) International Brotherhood of Electrical Workers, Local 1739, Applicant v. International Brotherhood of Electrical Workers; **Guild Electric Limited** and Ontario Labour Relations, Respondents

Alteration of Jurisdiction – Construction Industry – Judicial Review – Natural Justice – Practice and Procedure – The Local alleged that the Board's decision, finding just cause for the International to assume jurisdiction of the Local over a computer centre construction project in Barrie, should be quashed on a number of grounds – The Board, noting that s. 147(5) operated to stay the assumption of the Local's jurisdiction, was concerned that a full hearing might render the result inconsequential and moot, sine the project was near completion held a two day consultation in accordance with Rule 41, as the situation required a speedy resolution – The Board, having acknowledged that there were facts in dispute, determined there was sufficient uncontested material to permit it to reach an appropriate decision – The Board fashioned a specific remedy placing restrictions and conditions on the International's transfer of jurisdiction – On judicial review, the court first found that Rule 41 was not *ultra vires*, since there was no improper delegation of authority by the Chair, nor was the rule inconsistent with the scheme of the Act – The court found that the rule sets a standard that must be met before a Vice Chair may exercise their discretion in the circumstances of a particular case, and that the Rule is entirely consistent while noting that the Board "operates in a complex, dynamic, and highly fluid environment where expeditious rulings and informal and accessible procedures are often essential to maintaining the delicate balance between the parties' various interests" – Second, the court found that the Board did not deny the Local natural justice by proceeding with a consultation rather than a full hearing, since the core value embraced by the *audi alteram partem* maxim was met by the Board: providing the parties with an opportunity to be heard – The court also found it was not patently unreasonable for the Board to have chosen this procedure, since the Board was given the authority to balance the need for complete natural justice on the one hand against expedition on the other – Third, the court found that the Board did not exceed its jurisdiction by making findings of fact in the absence of any evidence, since there was evidence before it, the sufficiency and weight of which were within its exclusive jurisdiction, permitting it to make its decision – Fourth, the court found that the Board did not deny natural justice by failing to provide adequate reasons, since it provided a sufficiently adequate explanation of the process it engaged in, the conclusions it

reached, on what it founded those conclusions and the results of its conclusions – Finally the court found that the Board’s decision on the merits was not patently unreasonable: it was a sound and sensible decision in circumstances of acrimony that permitted the appropriate labour relations objective to be achieved, with the least intrusion on the rights of the Local’s members – Application dismissed

Superior Court of Justice (Divisional Court), Lane, Swinton, and Quigley JJ. June 22, 2007.

REASONS FOR JUDGMENT

M.G.J. QUIGLEY J.

Overview

[1] The International Brotherhood of Electrical Workers, Local 1739 (the “Local” or “Local 1739”), seeks judicial review of the April 6, 2006 decision of the Ontario Labour Relations Board (the “Board”) under the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A. (the “Act”). In its decision, the Board held that there was just cause for the International Brotherhood of Electrical Workers (“IBEW”) to assume the jurisdiction of the Local over the Bank of Montreal computer centre construction project in Barrie, Ontario (the “Barrie Job”). The Board reached that decision after holding a “consultation” with the parties, as permitted under its Rules of Procedure (“Rules”) in order to resolve labour disputes in an expeditious and informal manner.

[2] The Local had requested that its complaint be dealt with on an expedited basis, but complains that the Board made its decision based on unproven allegations in pleadings filed by the IBEW and the employer, Guild Electric Limited (“Guild”), and without holding a hearing. At issue is whether the Board exceeded its jurisdiction and breached the requirements of natural justice and procedural fairness in proceeding by way of consultation, by making findings of fact without calling the parties to testify at a hearing, and by providing inadequate reasons for its decision.

[3] The Local also maintains that the Board’s decisions were patently unreasonable, both on the procedure it adopted and on the substantive merits of the Local’s complaint. It requests an order in the nature of *certiorari* quashing the Board’s decision and remitting the matter to a different panel of the Board for a hearing. It also seeks a declaration that Rules 41.2 and 41.3 of the Board’s Rules are *ultra vires*. At its essence, the Local complains that the Board may not use the consultation procedure when it results in a decision that flows from untested conflicting facts that raise issues of credibility.

Background

[4] IBEW is the parent union of the Local. Labour relations between electrical workers and employers in Ontario are governed by a province-wide collective agreement between the Electrical Contractors’ Association of Ontario, IBEW, and the IBEW Construction Council of Ontario representing the 13 affiliated local unions of IBEW in Ontario, including Local 1739 (the “Collective Agreement”). Local 1739 has territorial jurisdiction over the County of Simcoe where the City of Barrie is located. It administers the Collective Agreement in that area. As local bargaining agent, its responsibilities include the determination of individual employee rights and

the implementation of employee safety rights. These duties are discharged by a business manager and Local union stewards. When an employer that is a party to the Collective Agreement undertakes electrical work in the County of Simcoe, it must deal with Local 1739.

[5] Guild is a Toronto based electrical contractor and a party to the Collective Agreement. Guild normally employs electrical workers who are members of its home local, IBEW Local 353 ("Local 353"), for construction jobs within the Toronto area.

[6] Construction work began on the Barrie Job in April 2005. Guild was the electrical contractor and it employed 200 electricians for the job. The Collective Agreement, as it applied in the Barrie area, allowed Guild to hire up to 20% of its workers from Local 353. An additional 160 electrical workers required for the Barrie Job were to be supplied by Local 1739. However, it brought in over 90 electricians (called "travelers") from other union locals to fill the required worker complement for this significant project, since it could provide only 64 of its own members.

[7] Under the terms of the Collective Agreement, certain benefits flowed to the Local from its jurisdiction over the Barrie Job. Local 1739 members had employment priority over other electricians once layoffs commenced as the project approached completion. Further, the Local was entitled to receive union dues and remittances for all workers employed at the Barrie Job, whether they were Local members or not.

[8] The Barrie Job was to be completed in April of 2006. However only a month before, on March 15, 2006, IBEW's International Vice President in Canada advised the Local that IBEW was reassigning jurisdiction over the Barrie Job to Local 353. IBEW justified its action by reference to two sources of complaint about Local 1739, one historical and one current.

[9] Since at least 1998, IBEW had received numerous complaints from unionized electrical contractors about undertaking work within the Local's geographic area. These included allegations of poor performance, poor work habits and the poor attitude of its members, overzealous stewards and health and safety representatives, and the Local's inability to meet manpower requirements. IBEW met with representatives of the Local on February 2, 2006 to discuss these persistent and continuing problems. The International Vice President then wrote to the Local on February 27, 2006, again outlining the alleged problems that had "been an ongoing issue for years," and referring to IBEW's "numerous, seemingly unsuccessful attempts to address these problems." IBEW warned the Local that unless it met certain objectives within 6 months, including "organizing, establishing friendly relations with employers, and protecting the jurisdiction of IBEW and the Local," IBEW would take action under the union constitution "to see that the interests of the members and IBEW are protected in the Local's jurisdiction." The senior management of the Local was summoned to a meeting on March 3, 2006.

[10] The second source of complaint related specifically to Local 1739 workers in the context of the Barrie Job, involving problems similar to those previously experienced by other contractors. Guild complained of a systemic problem of low job productivity due, in part, to inefficient work practices and the Local's apparent inability or unwillingness to rectify these problems. Guild claimed that it had difficulty in finding employees who would work overtime to get the job done. It complained that certain workers who had agreed to work overtime later refused to do so, with the Local's job steward insisting that he alone would decide overtime

assignments. IBEW was also concerned that the Bank of Montreal had expressed reluctance to build further projects in Barrie owing to the history of problems with the Local.

[11] Faced with what it perceived to be pressing issues relating to the computer centre project, IBEW wrote to the Local on March 9, advising that with respect to the Barrie Job, IBEW had been informed that "there are circumstances creating unnecessary problems." It authorized two IBEW representatives to take whatever action was necessary to "correct the situation." Shortly thereafter, on March 15, 2006, the IBEW Vice President reassigned the jurisdiction of Local 1739 to Local 353, but only with respect to the Barrie Job, and not other jobs in Simcoe County. IBEW wrote to all members of the Local on that date advising them of its action.

[12] On March 21, 2006, the Local brought an unfair labour practice complaint against IBEW under s. 96 of the Act. It complained of violations of the Act that "are clear, compelling and blatant." It claimed that IBEW had improperly and unjustly assumed authority over the Barrie job and reassigned its jurisdiction, contrary to ss. 147 and 149 of the Act. Those provisions permit a parent trade union to alter the jurisdiction of a union local only if it has "just cause." The Local claimed that it had never been advised by Guild of any specific problems on the job site attributable to its members, nor had any of its members been disciplined for any reason. In response to the specific request of the Local, the Board agreed on March 23, 2006 to expedite its complaint.

Historical Context, Statutory Framework and Relevant Legislative Provisions

[13] To better understand the decision reached by the Board in this matter, it is useful to first outline the statutory framework within which that decision was reached, and to have a sense of the historical developments and context out of which that framework grew. The Act is the product of over 60 years of labour relations legislation in Ontario. It was stressed before us in argument that this case must be viewed in the light of the evolution of labour relations legislation in Ontario. In my view, that contextual analysis is necessary to an informed current perspective of legislative intent in Ontario as it relates to the resolution of labour disputes.

[14] The first important step in that evolution was the 1943 decision of the Legislature to remove primary responsibility for the adjudication of labour disputes in Ontario from the courts and to instead confide that responsibility to a specialized tribunal. At that time, however, there was still no differentiation made, as it related to the conduct of Labour Board hearings, between trades employees, such as those involved in the construction industry, and unionized workers in the manufacturing or industrial sectors. Specialized statutory provisions had not yet been developed to address the unique features of the construction industry. In the 1950's, because of the different nature of that sector, specialized provisions were enacted dealing with trades employees, or "craft" workers, as they were also known. In the 1970's those provisions became even more specialized to deal with developments in the collective bargaining process in the construction industry. However, even with those further changes, the Board continued to determine disputes through the use of full hearings.

[15] As a result, in many cases jurisdictional disputes between unions representing different crafts within the construction industry were resolved only after weeks of Labour Board hearings, with the frequent result that the job that was the subject matter of the dispute was long

gone before the hearings were completed. This caused resort to self-help remedies, with shutdowns often following.

[16] It was this reality that caused the Legislature to enact important procedural changes in 1993 to deal with jurisdictional disputes. It obtained balancing input from both labour and management on how to create a process and procedures that would permit labour disputes in the construction industry to be resolved with less than a full hearing being provided to the parties, and with decision-making power as to the appropriate procedure bestowed on Board members having particular expertise in the unique aspects of construction industry labour disputes¹.

[17] Turning to look at the provisions of the legislation itself, it is instructive that specific legislative purposes are described in s. 2 of the Act. They include encouraging co-operative participation of employers and trade unions in resolving workplace issues and promoting the expeditious resolution of workplace disputes (ss. 2(6) and (7)).

[18] It is not surprising that labour-relations are widely recognized as a distinct sub-specialty in the construction sector. Construction employment is often episodic and of limited duration, with employees moving from project to project and employer to employer. Employees have a long-term, stable association with their union, but often only sporadic and project related associations with individual employers. In this context, the relationships between employees, local unions, and parent unions, are fundamentally different from those in other sectors². The Act recognizes these differences between the construction sector and other sectors by devoting a specific Part of the Act (ss. 126 to 168) to construction labour relations. That Part includes specific procedural provisions applicable to that industry. It gives the Board the power, amongst other things, to regulate aspects of the internal affairs of construction unions and provides a complaint procedure to the Board for alleged improper action. The Board's power to oversee internal union affairs is unique to the construction sector and is set out in a detailed and carefully calibrated legislative scheme.

[19] In furtherance of the legislative scheme, the Act contains extensive provisions establishing the Board's administrative framework and granting it important substantive and procedural powers, as well as two privative clauses precluding judicial review in ss. 114 and 116. The need for specialized expertise in construction labour relations is further specifically recognized in s. 110(5). Under that provision a special division of the Board, the construction industry division, is designated to adjudicate on disputes in the construction industry and to exercise the powers of the Board in proceedings applicable to that industry under ss. 126 to 168.

[20] As well, special practice and procedural powers are vested in the Board under ss. 110(16), (17), (18) and (20). Those provisions are as follows:

¹ This brief summary of the historical developments of current labour relations legislation in Ontario is drawn from several sources: Sack, Mitchell & Price, *Ontario Labour Relations Board Law and Practice* (Butterworths: loose-leaf); McArthur, Bloch & Salisbury, *Canadian Construction Labour and Employment Law* (Butterworths: loose-leaf); and see also the summary of developments in the hearing practices of the Board in *Total Support Services Ltd.*, [2004] OLRB Rep. January/February 147 at paras. 18-24.

² G.W. Adams, *Canadian Labour Law* (2d ed.), para. 15.30-15.40, citing J.A. Willes, *The Craft Bargaining Unit* (Queen's University, 1970) and W. Winkler, *A Study of Labour Relations Law in the Construction Industry in Ontario* (unpublished master's thesis, Osgoode Hall Law School, 1964).

Practice and procedure

(16) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions.

Rules of practice

(17) The chair may make rules governing the Board's practice and procedure and the exercise of its powers and prescribing such forms as the chair considers advisable.

Same

(18) The chair may make rules to expedite proceedings to which the following provisions apply:

...

2. Section 99 (jurisdictional, etc., disputes).
- ...
4. Sections 126 to 168 (construction industry).
5. Such other provisions as the Lieutenant Governor in Council may by regulation designate.
- ...

Special provisions

(20) Rules made under subsection (18).

- (a) may provide that the Board is not required to hold a hearing;
- (b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions; and
- (c) may authorize the Board to make or cause to be made such examination of records and such other inquiries as it considers necessary in the circumstances.

[21] It is of note that in exercising these and the other powers conferred on it under the Act, the Board has many of the same powers as a court in civil cases, including the power to summon witnesses, to require the production of relevant documentation, and to accept such oral or written evidence as it considers proper in the exercise of its discretion, whether that evidence would be admissible in a court of law or not (see s. 111).

[22] Section 147 is the provision that is at the heart of this dispute, relating to the action taken by IBEW in transferring authority over the Barrie Job from Local 1739 to Local 353. It is that section that permits an international union to take over the jurisdiction of a local bargaining agent where "just cause" is shown to exist. It provides, in part, as follows:

Jurisdiction of the local trade union

147. (1) A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise.

...

Determination of just cause

(3) On an application relating to this section, the Board shall consider the following when deciding whether there is just cause for an alteration:

1. The trade union constitution.
2. The ability of the local trade union to carry out its duties under this Act.

3. The wishes of the members of the local trade union.
4. Whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems.

Same

(4) The Board is not bound by the trade union constitution when deciding whether there is just cause for an alteration.

Complaint

(5) If a local trade union makes a complaint to the Board concerning the alteration of its jurisdiction by a parent trade union, the alteration shall be deemed not to have been effective until the Board disposes of the matter.

[23] Finally, the Board has created procedural rules, including Rule 41, which establishes the framework for expedited proceedings to be conducted by way of consultation. Rule 41 was established by the Chair pursuant to the rule making power under ss. 110(17), (18) and (20) of the Act. It is this rule that the Local claims is *ultra vires*:

Rule 41 - Expedited Proceedings

41.1 Rules 41.2 and 41.3 apply to the *Ambulance Services Collective Bargaining Act, 2001*, *Public Sector Labour Relations Transition Act, 1997*, Part X.1 of the *Education Act*, Part IV of the *Crown Employees Collective Bargaining Act, 1993*, section 61 of the *Occupational Health and Safety Act*, section 118(2) of the *Employment Standards Act, 2000* and sections 8.1, 13, 98, 99, 114(2) and 126 to 168 of the *Labour Relations Act, 1995*.

41.2 In order to expedite proceedings, the Board or Registrar may, on such terms as either considers advisable, consult with the parties, conduct a pre hearing conference, issue any practice direction, shorten or lengthen any time period, change any filing or delivery requirement, schedule a hearing, if any, on short notice, or cancel such hearing, or make or cause to be made such examination of records or other inquiries as either considers necessary in the circumstances.

41.3 Where the Board is satisfied that a case can be decided on the basis of the material before it, and having regard to the need for expedition in labour relations matters, the Board may decide an application by limiting the parties' opportunities to present their evidence or to make their submissions, or without a hearing.

The Board's Decision

[24] Rather than holding a full hearing to inquire into the Local's complaint, the Board decided to proceed by way of a "consultation" conducted in accordance with Rule 41. The Local objected to the complaint being resolved by consultation on the basis that the Board's consultative procedure was contrary to natural justice.

[25] Nevertheless, the consultation did proceed. It was held over a two-day period on April 3 and April 5, 2006. A substantial amount of material was placed before the Board. This included the Local's complaint contained in seven pages of pleadings along with the three recent letters between the Local and IBEW regarding the Barrie Job. The Local alleged that it had not been made aware of any major problems regarding its members' performance at the Barrie Job.

[26] Also before the Board were IBEW's and Guild's responses to the complaint. IBEW's response, filed with the Board on March 30, 2006, was 153 pages in length and included 23 pages of pleadings with extensive supporting exhibits documenting previous and current complaints against the Local. Guild's response to the complaint was contained in nine pages of pleadings with 22 pages of supporting exhibits documenting its problems with the Local, both historically going back to 1998, and specifically with respect to the Barrie Job.

[27] Finally, the Local also filed a 12-page reply with the Board in response to both IBEW's and Guild's submissions, and Guild filed a further response to the Local's reply. It is of note that in paragraph 1 of its reply, the Local categorically denied all of the allegations made against it by IBEW and Guild, except for one paragraph. It stated that it "puts [IBEW] and Guild to the strict proof of every single allegation and alleged fact."

[28] The Local claimed that the allegations in the pleadings relating to earlier construction projects were not particularized, related to events long past and had nothing to do with the computer centre site. It pleaded that it could only adequately respond to these allegations if it was permitted to present *viva voce* and documentary evidence, and to cross-examine the other parties on their allegations. Nevertheless, the Local confirmed that it had attempted to respond to those and the more current allegations in its reply pleading.

[29] The Board provided an oral decision on April 5, 2006 following the two-day consultation involving the parties and their counsel. It found in favour of IBEW. It concluded that IBEW had "just cause" under s. 147(1) to reassign the jurisdiction of Local 1739 to Local 353 with respect to the Barrie Job. The Board provided written reasons for its decision on April 6, 2006. Those reasons are brief, comprising just over three pages.

[30] In its reasons, the Board explained that the urgency of the matter had made it impractical to hold a full hearing and that it had instead determined to conduct a consultation. The Vice Chair noted the Local's objection to the matter proceeding as a consultation, but concluded "the concerns of all parties dictated that the matter should be dealt with quickly." In the Local's view, however, as recounted by the Vice Chair, the Board "did not have authority to deal with the matter by way of consultation." The Local claimed the "procedure was contrary to the principles of natural justice." The Vice Chair responded that he had determined to "allow each party to make full submissions on the preliminary matters and on the merits at the same time" during the consultation. He would then be "in a better position to determine whether [he] could make a final determination based on the pleadings and the submissions or whether evidence would be required."

[31] The Board concluded that the circumstances of the Barrie Job precluded the conduct of a full hearing since s. 147(5) of the Act operated to stay the assumption of the Local's jurisdiction over the Barrie Job by IBEW and its reassignment to Local 353. The Board was concerned that the result would be inconsequential and moot if a full hearing were held, for the simple reason that work at the Barrie Job would have been completed before the final disposition. The Board concluded that this reality called for a speedy resolution of the case, a result that could best be assured through the use of the consultation procedure for which provision was made in its Rules. The Board said this regarding that choice of procedure:

First – this matter is decided as a result of the consultation process just completed. Section 110(18) and (20) of the Act do provide the Board with the authority to make rules to hold such consultations with or without evidence and the rules have been established for such consultations. (See Rule 41.) A consultation may not always be the most thorough or perfect process for deciding difficult cases. But the Board is given the authority to balance the need for full-blown natural justice on the one hand against expedition on the other. That is an extremely important balancing act in the field of labour relations in which it is often said that “labour relations delayed is labour relations denied.”

[32] While acknowledging that many facts were contested, the Board determined that there was sufficient uncontested material to permit it to reach an appropriate decision. On the merits, the Board accepted that Guild had experienced problems on the Barrie Job relating to productivity, the administration of work practices such as those respecting overtime, “and other such problems as outlined in the pleadings”. The Board acknowledged that some attempts had been made by the Local to deal with those problems. Nevertheless, it determined that IBEW was justified in concluding that Guild and the Local could not work together satisfactorily to complete the Barrie Job in the manner required by Guild and its client, the Bank of Montreal. In the critical paragraph of the Board’s reasons, the Vice Chair said:

I do accept that the contractor experienced peculiar problems on this job – problems in terms of productivity, in the administration of work practices such as those respecting overtime and other such problems as outlined in the pleadings. I also find that although the pleadings outline an effort by the applicant’s business manager to deal with some of those problems a point was reached in which the IU reached the justifiable conclusion that the contractor and the Local could not work together satisfactorily to complete the job in the manner required by the contractor. At some point it was justified to conclude that neither the stewards not [sic] the local leadership could administer or adopt [sic] their practices to allow the contractor to manage the job in the way it was entitled to. I therefore find that the IU had just cause to assume authority to look after the job and to delegate that authority as it deemed appropriate.

[33] The manner in which the Board disposed of the matter is of particular interest. Although it concluded that IBEW had “just cause” to assume jurisdiction over the Barrie Job, it held that IBEW was not justified in a wholesale transfer of the job into Local 353, since that made the members of the Local “travelers” under the Collective Agreement. Therefore, the Board placed conditions and restrictions on IBEW’s transfer of jurisdiction over the Barrie Job from Local 1739 to Local 353, requiring that Local 1739’s mobility provisions continue to apply as if the job were still being performed within its jurisdiction. As a practical matter, this meant that the Local members were not considered “travelers” and retained their priority protection against layoffs. Further, the Board declared that all union remittances would continue to be made to Local 1739’s offices. Finally, given the brevity of its written reasons, the Board stated that further reasons might follow, and the presiding Vice Chair noted that he “remained seized to deal with any difficulties in implementing this award.”

Issues

[34] The Local applies for judicial review on a number of grounds, relating both to the validity of the consultation procedure adopted by the Board, and to the outcome of that procedure and the decision rendered by the Board on the merits of the complaint. The Local asks this Court to quash the Board's decision and order that the matter be remitted to a different panel of the Board for a hearing. However, since the Local challenges the entire validity of the expedited procedural framework established by the Board, this Court should first determine whether there is merit to that position. If Rule 41 of the Board is found to be *ultra vires*, it would dispose of the remaining issues, since a valid decision, either to adopt the consultation procedure in this case or on the merits of the complaint, could not flow from a fatally flawed procedure. Accordingly, I will first address this issue. Thereafter, after setting out the applicable standard of review, my analysis and determinations are provided to the remaining questions in issue:

1. Did the Board deny the Local natural justice in proceeding by way of a consultation process and by failing to hold a full hearing?
2. Did the Board exceed its jurisdiction by making findings of fact in the absence of any evidence?
3. Did the Board deny the Local natural justice by failing to provide adequate reasons?
4. Was it patently unreasonable for the Board to proceed by way of a consultation process rather than by a full hearing?
5. Was it patently unreasonable for the Board to conclude that IBEW had just cause under subsection 147(1) of the Act to remove jurisdiction from the Local over the Barrie Job?

Is Rule 41 *ultra vires*?

[35] The Local claims that Rule 41 is *ultra vires* either because there has been an improper delegation of authority by the Board Chair or because Rule 41 is inconsistent with the language and scheme of the Act.

Improper Delegation

[36] The Local submits that in exercising his power under section 110 of the Act, the Chair did not establish a rule that sets standards and/or gave parties or Vice Chairs of the Board guidance as to when and how the discretion to deny a hearing or to deny the right to present evidence and make submissions might be exercised. Instead, it claims that the Chair simply embodied the language of ss. 110(20)(a) and (b) in Rule 41.3. In doing so, it says that the Chair improperly sub-delegated the power to make rules to Board Vice-Chairs on an *ad hoc* basis, and thereby bestowed untrammelled discretion on them. The Local asserts that Rule 41.3 is *ultra vires* the authority granted to the Chair under s. 110(18) as a result of that alleged improper delegation of rule making discretion.

[37] IBEW, Guild and the Attorney General of Ontario reject the Local's contention that Rule 41 results in an improper delegation of power. Both the Board and the Attorney General argued that the Chair had authority to adopt Rule 41 and that it cannot be viewed as an improper delegation of the Chair's authority under s. 110(18) of the Act.

[38] The Local argues that Rule 41 breaches the fundamental administrative law principle that a person to whom a power is delegated may not in turn delegate that power to another: see *Brant Dairy Co. v. Ontario (Milk Commission)*, [1973] S.C.R. 131 (S.C.C.); *Swan v. Canada (Minister of Transport)*, [1990] 2 F.C. 409 (T.D.). However, it is against the background of the legislation outlined earlier in these reasons that this proposition must be tested. Moreover, it must be remembered that the *delegatus non potest delegare* maxim is only a principle of statutory construction. Consideration must be given to the whole of the enactment, its purposes and its objects, using a pragmatic and functional analysis to determine whether the legislation impliedly authorizes delegation: *Re Peralta and The Queen* (1985), 16 D.L.R. (4th) 259 (O.C.A.), aff'd 1988 CanLII 28 (S.C.C.), [1988] 2 S.C.R. 1045; see also Brown & Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), para. 13:2221; *British Columbia (Milk Marketing Board) v. Aquilini* 1998 CanLII 6518 (BC C.A.), (1998), 165 D.L.R. (4th) 626 (B.C.C.A.) at para. 29.

[39] Taking these principles into account, I reject the contention that the Chair has improperly delegated his rule-making power. Rule 41 is not simply a recitation of the Act. It requires Board members to give consideration to particular issues in the course of determining the most appropriate procedure, but it also sets the standard that must be met in making such determinations. Significantly, it permits the Board to decide a matter even where a party's opportunity to present evidence or make submissions is limited, but only where the presiding member is first satisfied that the case can be decided on the basis of the limited material before it, and having regard to the need for expedition. That does not constitute sub-delegation of the rule making authority, but instead the establishment by the Chair of a standard or guideline to be adhered to by the Board Vice Chairs in making determinations in each case whether the consultative process will be appropriate and adequate. It sets the standard against which Vice Chairs may determine what conditions or limitations ought to be imposed, or whether another procedure is required. In establishing this rule, the Chair has simply recognized the need for discretion to be exercised in the circumstances of each case, creating a rule, as authorized by statute, which establishes a procedural framework capable of flexibly meeting a variety of labour relations circumstances.

[40] Applying a pragmatic and functional analysis, it is difficult, if not impossible to set out hard-and-fast rules respecting what form of expedited procedure will fit the circumstances of each individual case. Specifically, the need for both expedition and flexibility that the Legislature mandated through the empowering provisions of the Act supports the provision of a flexible process capable of meeting the varying demands of each dispute. The Legislature intended to create a practical goal-oriented framework within which the most appropriate procedure could be adopted, given the needs of each case. It did not intend to create a rigid structure. In establishing Rule 41 in accordance with the power granted under the Act, the Chair successfully embodied the principles that the Legislature intended would govern, permitting procedural flexibility, but only where the presiding Vice Chair determines that the expedited procedure complies with the criteria articulated in Rule 41.3. The rule does not constitute impermissible sub-delegation of the Chair's rule-making authority.

Consistency of Rule 41 with the Scheme of the Act

[41] The Local accepts the need for expedition in labour relations and acknowledges that even short delays may result in rights being lost, but it argues that expediency is not the only

relevant labour relations value, nor necessarily the most important one. It says Rule 41 makes expediency the sole or primary value, potentially causing unfairness or the loss of a meaningful opportunity for parties to present their case. As such, the Local claims it is inconsistent with the nature and scheme of the Act.

[42] The Local relies on s. 110(6) of the Act, which permits the Board to determine its own practice and procedure but requires that it give full opportunity to the parties to any proceedings to present their evidence and to make their submissions. To achieve the objective of parties having a full opportunity to present evidence and make submissions, the Local argues that the Board's procedural rules must demand that it ask itself whether expedition is truly necessary in the circumstances. If the Board concludes that expedition is required, then it must determine whether other procedures might better balance expedition against procedural fairness, and it must choose the process which least impairs procedural fairness. The Local claims such an approach is not only consistent with the language of the Act, but also with the general assumption that the Legislature intends a tribunal's process to comport with the principles of natural justice, that unequivocal language is necessary to abrogate the common law right to procedural fairness, and that such language is to be read narrowly; see *Kane v. Board of Governors of the University of British Columbia* (1980), 110 D.L.R. (3d) 311 (S.C.C.) at p. 322; *Joplin v. Chief Constable of the City of Vancouver* (1982), 144 D.L.R. (3d) 285 (B.C.S.C.) at pp. 291-292, affirmed (1985), 20 D.L.R. (4th) 314 (B.C.C.A.); and *Canadian Union of Public Employees v. Ontario (Minister of Labour)* 2003 SCC 29 (CanLII), (2003), 226 D.L.R. (4th) 193 (S.C.C.) at para. 117.

[43] The Local argued that Rule 41 is inconsistent with the language and scheme of the Act, because it does not expressly require the Board to "choose the process which least impairs procedural fairness." The problem with this submission is that the Local puts forward an entirely subjective view of what process would meet the demands of procedural fairness. Further, it is difficult to reconcile its argument with the express terms of the Act, which not only require the Board to consider the statutory purpose of promoting the expeditious resolution of workplace disputes, but also expressly empower the Chair to make rules that may provide that the Board is not required to hold a hearing. Those provisions also expressly permit the Board to make rules that may limit its obligation to give full opportunity to a party to present evidence and make submissions, despite anything in the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("SPPA"). The Local's suggested interpretive requirement would effectively read these provisions out of the Act, removing the discretion expressly given to the Chair by the Legislature.

[44] The Local sought to analogize the situation to Rule 20 of the Rules of Civil Procedure, which sets out the requirements that must be met and the procedure that is to be followed on a summary judgment motion. However, the comparison made by the Local ignores that summary judgment motions arise in entirely different circumstances. Labour relations disputes are not the same as civil litigation, and the Board is an administrative tribunal, not a court. It operates in a complex, dynamic, and highly fluid environment where expeditious rulings and informal and accessible procedures are often essential to maintaining the delicate balance between the parties' various interests. The Board exists distinct from the courts, precisely because "court procedure" was inadequate, as history shows, to respond to the needs and pace of labour relations and labour dispute matters. The history of the Board's creation and evolution makes this dichotomy plain.

[45] The Local cannot succeed in this submission having regard to the historical development of labour relations legislation in Ontario, the statutory framework that the Legislature saw fit to create in the Act, the specific rule making authority that was given to the Chair, and the manner in which that rule making authority was exercised. That context makes clear that Rule 41 is neither *ultra vires*, nor that the manner in which the Chair exercised that authority gave rise to impermissible sub-delegation. Against the Legislature's clear statutory expression of intent, and the consistency of Rule 41 with that intention, the Local's position is unsupportable.

Standard of Review

[46] The standard of review applicable to the Board is to be determined by examining four factors: the presence or absence of a privative clause in the Board's enabling legislation, the relative expertise of the Board, the purpose of the Act and the particular provisions in issue, and the nature of the problem before the tribunal: *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (S.C.C.), [1998] 1 S.C.R. 982, at paras. 29-38; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 (CanLII), [2003] 1 S.C.R. 247; *Thyssen Elevator Limited v. National Elevator and Escalator Association et al.*, [2004] O.L.R.B. Rep. 847 (Div. Ct.) at paras. 24-25.

[47] Here, decisions of the Board are protected by two strong privative clauses that signal the Legislature's intent that the courts should defer to the Board in all but the most exceptional of cases. As well, having regard to the accepted expertise of the Board in the "dynamic, complex and sensitive field" of labour relations, it is clear that the Board's decisions attract the highest standard of judicial deference and are only reversible if they are patently unreasonable: *Ajax (Town) v. C.A.W., Loc. 222* 1998 CanLII 7179 (ON C.A.), (1998), 166 D.L.R. (4th) 516 (Ont. C.A.), affirmed 185 D.L.R. (4th) 618 (S.C.C.); *Ontario (Attorney General) v. O.P.S.E.U.* 2000 CanLII 17008 (ON C.A.), (2000), 52 O.R. (3d) 77 (C.A.) at para. 34; *Royal Oak Mines Inc. v. Canada Labour Relations Board*, 1996 CanLII 220 (S.C.C.), [1996] 1 S.C.R. 369 at paras. 32-36, 57-58; *Canada (Director of Investigation and Research) v. Southam Inc.* 1997 CanLII 385 (S.C.C.), (1997), 144 D.L.R. (4th) 1 (S.C.C.), at para. 50. In the present case not only was the Board acting in its area of general expertise, but it was also acting in a doubly specialized capacity relating to the construction sector, an area of responsibility it was entrusted to regulate in accordance with industry-specific legislative rules.

[48] The third and fourth of the *Pushpanathan* factors are the purpose of the legislation and the nature of the problem before the tribunal. The Act has a number of enumerated purposes, but the most important against the background of this dispute must be those of promoting the expeditious resolution of workplace disputes and encouraging co-operative participation of employers and trade unions in resolving workplace issues. Finally, the nature of the dispute is clear. It is a jurisdictional dispute between a local affiliated bargaining agent, Local 1739, and its parent union, IBEW, that falls squarely within the specialized legislative provisions applicable to the construction industry.

[49] It becomes evident when these factors are combined that the standard of review applicable to the merits of the Board's decisions is that of patent unreasonableness. The Local, IBEW, Guild and the Board all accept that the standard of review of the Board's decision on the merits is one of patent unreasonableness.

[50] The Local also raised a number of issues of procedural fairness and the denial of natural justice. It asserts that an assessment of the standard of review is unnecessary where natural justice is an issue or where findings of fact are made in the absence of evidence. In its submission, those constitute errors that necessarily cause the Board to exceed its jurisdiction, thus pre-empting a consideration of whether the decisions pass muster under any standard of review.

[51] In *Gismondi v. Ontario (Human Rights Commission)*, [2003] O.J. No. 419 at para. 16, this Court held that it is not necessary for the Court to engage in an assessment of the standard of review where a tribunal's decision is attacked on the basis of a denial of natural justice. The duty of procedural fairness was raised as well in *London (City) v. Ayerswood Development Corp.* [2002] O.J. No. 4859 (C.A.), at para. 10, where the applicant claimed that it was denied natural justice by the Ontario Municipal Board. The Court of Appeal addressed the standard of review that was applicable to the tribunal's decisions and confirmed that:

[w]hen considering an allegation of a denial of natural justice, a court need not engage in an assessment of the appropriate standard of review. Rather, the court is required to evaluate whether the rules of procedural fairness or the duty of fairness have been adhered to. **The court does this by assessing the specific circumstances giving rise to the allegation and by determining what procedures and safeguards were required in those circumstances in order to comply with the duty to act fairly.** See *Moreau-Bérubé*, *supra*, at paras. 74-75. (my emphasis)

[52] Courts have recognized that the duty of fairness is flexible and may vary based on all of the circumstances. In *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (S.C.C.), [1999] 2 S.C.R. 817, the Supreme Court identified five factors that should be considered in determining the required content of the duty of fairness. These include the nature of the decision, the nature of the underlying legislative scheme, the importance of the decision to the person affected, the legitimate expectations of the person challenging the statute, and the decision-maker's choice of procedure. More recently, in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)* 2004 SCC 48 (CanLII), (2004), 241 D.L.R. (4th) 83 (S.C.C.) ("*St. Jérôme*") at para. 5, Chief Justice McLachlin reformulated the last factor, focusing not on the procedural choice made by the tribunal, but instead on "the nature of the deference accorded to the body". The dissenting members of the Court in *St. Jérôme* reasserted the "choice of procedure" factor described by L'Heureux-Dubé J. in *Baker*, but they expressed no disagreement with the Chief Justice's focus on deference.

Did the Board deny the Local natural justice in proceeding by way of a consultation process and by failing to hold a full hearing?

[53] The Local says the Board violated the principles of natural justice by failing to hold a hearing. It says that the factors set out in the *St. Jérôme* case evidence a requirement that there be greater protection of procedural rights in a case such as this. First, it asserts that the rights oriented nature of the Board's decisions and the powers granted to it under the Act suggest that greater procedural protections are warranted, given the Board's status as a quasi-judicial body that adjudicates the rights of parties and makes final decisions with no right of appeal.

[54] Second, the Local claims the construction industry provisions in the Act demonstrate that parent union interference with a union local is a serious matter. It claims that the absence of

an internal appeal being permitted and the inclination of the courts to review decisions of the Board on matters within its jurisdiction on only the most deferential standard also weigh in favour of greater procedural protections. Moreover, to the extent that the Board's determination respecting the presence of "just cause" may impact the Local's financial position and its right to represent its members and protect their job security, the decision is one of great importance. The Local claims as well to have had a legitimate expectation that the Board would not exercise its discretion under the Rules in a way that would "render it unable to defend itself" against serious allegations and attacks on its members, or to carry out its obligations.

[55] If the Local is correct that all of these factors point in the direction of greater procedural protections, then it argues that the Court should show little deference to the Board's procedural choices. It claims the Board cannot be permitted to rely on its Rules to justify the procedural choices it made in this case, because the *audi alteram partem* rule - let the other side be heard - requires that parties be given "a meaningful opportunity to present their case fully and fairly" in an oral hearing. Local 1739 argues that this is particularly so in a case such as this where it claims that evidence on material issues conflicts, and issues of credibility must be resolved to permit the matter to be decided: *Khan v. University of Ottawa* 1997 CanLII 941 (ON C.A.), (1997), 34 O.R. (3d) 535 (C.A.), at p. 543; *Masciangelo v. Spensieri*, [1990] O.J. No. 1429 (H.C.J.), at p.7; *Cadillac Investments Ltd. v. Northwest Territories (Labour Standards Board)*, [1993] N.W.T.J. No. 126 (S.C.), at paras. 9-12; and *Willette v. R.C.M.P.*, [1985] 1 F.C. 423 (C.A.). However, I note that most of these decisions arose outside of a labour relations context, and in the one that did involve labour relations (*Cadillac Investments*), a decision under the *Alberta Labour Standards Act*, Wachowich A.C.J. specifically acknowledged that the decision whether or not to allow the parties an oral hearing unquestionably lay within the discretion of the Board.

[56] Notwithstanding, the Local claims that it was a breach of natural justice for the Board to deny the parties a hearing. It acknowledges that the duty of fairness may be satisfied by less extensive procedural rights, but claims that a party must still be given the opportunity to present evidence and submissions relevant to its case, and be given a fair opportunity for correcting or contradicting prejudicial evidence and submissions. Instead, the Local asserts that IBEW was allowed to rely exclusively on disputed allegations contained in its pleadings and those of Guild Electric. It claims that a refusal to allow a party to present evidence on disputed material issues and then to rely on one unsubstantiated version of those disputed issues in finding against a party, may be a denial of natural justice: *Eastern Provincial Airways Ltd. v. Canada Labour Relations Board* (1983), 2 D.L.R. (4th) 597 (F.C.A.), at p. 611; *Baltimore Aircoil Interamerican Corp. v. Ontario Labour Relations Board*, [1981] O.J. No. 175 (Div. Ct.), at paras. 25-26, appeal dismissed, [1981] O.J. No. 2026 (C.A.); *Sowemimo v. College of Physicians and Surgeons of Manitoba*, *supra*, at para. 35; and *Cheung v. Minister of Employment and Immigration*, [1981] 2 F.C. 764 (C.A.) at para. 10 and 26.

[57] It is well accepted law that the duty does not necessitate a formal hearing with *viva voce* evidence and the right to cross-examine witnesses: *Québec (Labour Relations Board) v. Canadian Ingersoll Rand Co.*, [1968] S.C.R. 695; *Nav Canada v. IBEW, Local 2228* (2001), 2001 F.C.J. No. 257 (C.A.); *Nicholson v. Haldimand and Norfolk (Regional Municipality) Commissioners of Police*, 1978 CanLII 24 (S.C.C.), [1979] 1 S.C.R. 311. In *Nav Canada*, *supra*, at paras. 9 through 11, Sexton J.A. noted that provisions of the *Canada Labour Code*, similar to

those at issue here, permitted the Canadian Industrial Relations Board to reach a decision in a matter in dispute under that statute without holding a hearing:

...The *audi alteram partem* rule does not require an oral hearing. (*Québec (Labour Relations Board) v. Canadian Ingersoll Rand Co.*, [1968] S.C.R. 695).

Further, section 16(1) of the *Canada Labour Code* and section 19(2) of the Regulations provide that the Board may decide any matter before it without holding an oral hearing. Thus, even if the Applicant had requested a hearing the Board was at liberty to decide the matter without granting an oral hearing.

The scheme of the legislation and Regulations indicates that the Board will decide on the basis of the material filed unless it decides to hold an oral hearing or specifically requests additional evidence. No authority was provided to the Court for the proposition that the Board cannot do so, or that in order to treat the material filed as evidence, the Board must give notice to the parties of this intention.

[58] It is useful to look first at the Board's enabling legislation, the second of the five factors enumerated in *Baker* and *St. Jérôme*, in evaluating whether the Board denied the Local natural justice or procedural fairness in this case. That factor is of heightened importance here, as it was in *Nav Canada*, because the Supreme Court of Canada has confirmed that absent constitutional limitations, the exercise of powers by a board or tribunal in accordance with the express provisions of its governing statute cannot be attacked as a breach of natural justice: *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52 (CanLII), [2001] 2 S.C.R. 781, at para. 22.

[59] The Legislature specifically empowered the Board to expedite certain kinds of proceedings, including those used in the very kind of dispute in issue here, and in doing so to limit the opportunity of parties to present evidence and make submissions. Moreover, the Legislature expressly excluded the application of the SPPA. Enacted in 1971 following the recommendations of the McRuer Commission, the SPPA was intended to codify the principles of natural justice so that they could be applied to a range of administrative tribunals that hold evidentiary hearings. Where issues of natural justice arise under the *Labour Relations Act*, however, it is evident the Legislature concluded that the SPPA rules should be tempered by other considerations specific to labour relations. Against this background, it is also evident that the clearly expressed will of the Legislature would be frustrated were this Court to second-guess the Board's application of these provisions on the basis of common law principles of natural justice or procedural fairness, at least in the absence of a patently unreasonable procedural decision being reached by the Board.

[60] Moreover, even though it may not have been obliged to do so, I reject the accusation that the Board did not grant a "hearing" to the Local in this case. I agree with counsel for the Board that we should regard this terminology with some care as we focus on the Local's contention it was "denied a hearing." It is true that the Board conducted a "consultation" process rather than a "hearing", but it must be acknowledged that a consultation of the type provided for under the Board's Rules does provide the parties with "the right to be heard" as this term is used in the administrative law sense, just as a "hearing" provides that opportunity. A particular choice

of forum or procedure is not inherent in the centuries old *audi alteram partem* maxim. The core value embraced by that principle, at its simplest, is the obligation of a decision maker to listen to both sides before making a determination. Here, all of the parties were given an opportunity to make both written and oral submissions on the basis of a voluminous documentary record. The only procedures denied to the Local were the rights to call *viva voce* evidence and to cross-examine witnesses. As found by the Board at page 3 of its reasons, however, hearing *viva voce* evidence and permitting cross-examinations would likely have made the result moot.

[61] I reject the Local's assertion that the right to be heard under principles of natural justice or procedural fairness necessarily entails a right to call evidence and to subject witnesses to cross-examination in every case. While such rights are provided for explicitly in the SPPA, here the Legislature has clearly indicated that the SPPA provisions do not apply. The fact that the Local was not accorded the right to call evidence or to cross-examine as would have been the case in court proceedings cannot result in a violation of the right to be heard principle where the Board granted a full right of audience to the parties under a consultation process and against the background of the voluminous written materials they filed: *Baker v. Canada (Minister of Citizenship and Immigration)*, *supra*, at para. 33; *R. v. Québec (Labour Relations Board)*, *ex parte Komo Construction Inc.* (1967), 1 D.L.R. (3d) 125 (S.C.C.); *Webb v. Ontario Housing Corp.* (1978), 22 O.R. (2d) 257 (C.A.).

[62] Returning to the first factor in *Baker*, there can be no doubt that the nature of the decision that confronted the Board in this case required an expedited procedure. It related to an important labour dispute on a large project with the need for its timely completion. Holding the kind of formal hearing proposed by the Local in the face of impending deadlines for completion would have rendered the Board's determination on the merits meaningless and moot, given the time necessary to proceed in such a fashion. Had the Board permitted full, or even abbreviated hearings with examination and cross-examination instead of adopting the expedited consultation process, the project would long since have been completed. Delay in this case would have been highly prejudicial to the bigger picture, a fact noted by the Board in making the procedural determination it did.

[63] The third of the *Baker* factors is the importance of the decision to the parties affected. In determining the appropriate standard of fairness that the Board was required to provide to the Local, we must look at the competing interests that the Board faced going into the process. On the one hand, from the Local's perspective there was the loss of the Barrie Job for the Local and the undermining of layoff rights and payment of funds that would result from the removal of its jurisdiction over that project. No doubt these are serious issues, but on the other hand, looked at from the perspective of the other parties, this was a one-site transfer of jurisdiction taking place only one month before the expected completion of the job. In determining the appropriate standard of fairness to be applied in this case, the subject matter of the Board's decision cannot and should not be equated with a transfer away from Local 1739 of its entire jurisdiction in the whole geographic area that fell under its control. Looked at from this perspective, it appears to me that there was a lesser need for procedural safeguards to be provided to the Local, compared to the level of fairness that might have been required if the competing interest of the Local involved a loss of its entire jurisdiction.

[64] On the fourth issue of legitimate expectations, there were neither factual nor legal elements present here that could reasonably engage that doctrine. The Local made no allegation

that it was misled by the conduct of the Board. Indeed, the use of the consultation procedure by the Board is well known in the labour relations community. It is the subject of information bulletins and reported decisions of the Board³³¹. It can have come as no surprise to the Local, ten years after its introduction, that the Board might choose to adopt the consultation process in this dispute. Moreover, the parties were given the opportunity to make submissions on the procedure to be used before the Board made its decision to proceed by way of consultation. These factors all feed into a reasonable conclusion that there is no cogent foundation in the present case for an allegation by the Local that its legitimate expectations were thwarted.

[65] Finally, on these factors, there is the nature and extent of the deference that is properly to be accorded to the Board. The privative clauses that the Legislature saw fit to include in the Act protecting decisions of the Board from judicial review make it clear that the Legislature intended that decisions of the Board would be afforded substantial deference, including choices of procedure. More importantly, the control of procedure and express power granted to the Board not to hold a hearing are key. Applying these various factors, the conclusion is unavoidable that the Board did not deny procedural fairness by proceeding as it did: see also *Ottawa-Carleton Public Employees Union, Local 503, CUPE v. The Ottawa Transportation Board*, [2004] OLRB Rep. March/April 468 (Div. Ct.) at page 470. The Board found in this case that the nature of the decision required an expedited process. It reached that conclusion on the grounds that if it had proceeded by way of a hearing in the ordinary course, the Local would likely have succeeded by default regardless of the merits of its case. Given the nature of labour relations, the Board is frequently in a position where it must use expedited procedures to achieve practical results. This Court ought to show proper deference to the Board's decision on the appropriate procedure, having regard to that specialized perspective, as was contemplated by the Legislature.

[66] In summary, I conclude that the Board did not deny the Local an opportunity to be heard, and it complied with its duty of procedural fairness. It provided a hearing opportunity through the use of the consultation process in which the Local was able to present its position, respond to the other parties and to make its position known over the course of the two-day period in which the Board heard the submissions and argument of the parties. The Board acknowledged in *Total Support Services, supra*, that this is not a perfect form of litigation. It necessarily represents a trade-off between speed and efficiency on the one hand and a detailed fact-finding process on the other. Nevertheless, given the Board's authority to proceed as it did and the actual "hearing" opportunity it provided to the parties, in my opinion there is no merit to the Local's

³ In *Teamsters Local 938 v. Patrolman Security Services Inc.*, [2005] O.L.R.D. No. 4053 at paras. 9 and 10, the Board stated:

In the application of these Rules, the Board has over the last decade developed a process described as a "consultation" which is employed in certain types of applications. The Board distinguishes the "consultation" process from the "hearing" process...

The Board's Information Bulletin No. 11 describes the consultation process used by the Board to adjudicate duty of fair representation complaints filed pursuant to section 74 of the Act. While the Information Bulletin is directed to litigants involved in applications under section 74 of the Act, the description of the consultation process is generic and applies to the process used generally under other statutory provisions and pursuant to Rules 76 and 77. In a consultation, the parties are not provided with an oral hearing - which would consist of the opportunity to verbally put forward relevant evidence and argument. Rather, the parties are being "consulted" by the Board for the purpose of filling in the informational gaps that exist in the Board's understanding of the dispute, after having reviewed the detailed material and submissions filed in support of their positions. While the parties have less control over the process and the adjudicator exercises more procedural discretion, the consultation process is far more expeditious and practical than a traditional oral hearing. Such a balancing of procedural entitlements as against expedition and practical focus is not unusual in labour relations litigation.

claim that the Board violated its duty of procedural fairness in deciding not to grant a full hearing in the context of this matter.

Did the Board exceed its jurisdiction by making findings of fact in the absence of any evidence?

[67] The Local says the Board made its decision in the absence of any "evidence". It says the Board acknowledged that many facts were contested, but stated its conclusions without outlining the "uncontested facts" that supported those conclusions. Although the Board did not either hold a full "hearing" or permit the parties to present any formal "evidence", or to cross-examine witnesses, that does not lead to a conclusion that the Board's decision must have been based entirely on the disputed and unsubstantiated allegations in the pleadings.

[68] The Board had a different perspective on the record that was before it. It stated that there was "sufficient uncontested material" in the pleadings to conclude:

- (a) that the Local could not staff the computer centre site entirely with its own members and that this was a problem;
- (b) that Guild Electric experienced "peculiar problems" on the computer centre job in terms of productivity, in the administration of work practices such as those respecting overtime and "other such problems as outlined in the pleadings";
- (c) that the contractor and the Local could not work together satisfactorily to complete the job in the manner required by the contractor; and
- (d) that the union could not administer or adapt its practices to allow the contractor to manage the job "in the way it was entitled to".

[69] The Local argues, however, that the Board simply stated its conclusions and did not identify the "uncontested facts" that supported those conclusions. The courts have consistently held that administrative tribunals who adjudicate the rights of parties must base their decisions on evidence that is reliable and has cogency in law: see *R. v. Barber et al., Ex parte Warehousemen and Miscellaneous Drivers' Union Local 419*, [1968] 2 O.R. 245 (C.A.), at pp. 255-256; *Re Girvin et al and Consumers Gas Co.* (1974), 1 O.R. (2d) 421 (Div. Ct.), at p. 424; *Bond v. New Brunswick (Board of Management)*, [1992] N.B.J. No. 115 (Q.B.), at p. 3, upheld [1992] N.B.J. No. 567 (N.B.C.A.), leave to appeal refused [1992] S.C.C.A. No. 516.

[70] In *Girvin, supra*, this Court acknowledged that the statute permits the Board to accept oral or written evidence which it considers should properly be received in the exercise of its discretion and whether or not admissible in a court. The Court noted that a hearing does not meet the standards of procedural fairness where a board bases its decision exclusively on hearsay and the affected party has no real opportunity to cross-examine on what was presented. However, there are three points that differentiate that case from ours. First, the context was a hearing about the discharge of an employee, a different situation from our own and one in which the highest standard of fairness is required. Second, the legislative regime was quite different from ours.

Post-1993, in a legislative world where no hearing at all may be required in the construction industry's special circumstances, the strictures against basing the decision on hearsay lose their bite. If hearsay is admissible, why cannot the decision be based on it, subject to some opportunity to challenge? Finally, effective challenges to evidence are not confined to cross-examination; contrary evidence and oral submissions can also be effective and where there is no hearing, must be accepted as a substitute for cross-examination. This is the necessary corollary to the lack of a formal hearing.

[71] The Local asserts in this case that the Board not only based its decision on evidence that was not cogent, but that it failed to base its decision on any evidence at all. Accordingly it says the decision cannot stand: *Re Keeprite Workers' Independent Union and Keeprite Products Ltd.* (1980), 29 O.R. (2d) 513 at p. 519 (O.C.A.). If material facts are undisputed, the Local acknowledges that the Board is entitled to reach a decision by applying appropriate legal principles to undisputed facts in the pleadings. However, where the facts are contested as they are here, it says that the Board cannot simply guess as to which pleadings, or which parts of which pleadings, are accurate or truthful or simply select one version of the allegations over another without hearing evidence. In such a case, it says the Board must give the parties a means by which to call or submit evidence, and to test each other's evidence.

[72] Not surprisingly, IBEW and Guild have a very different perspective on the adequacy of the evidence before the Board. In their submissions the Board had ample evidence to support its decision. It had the extensive pleadings and other supporting documentation put before it, as well as the full oral submissions made by the parties over a period of two days at the consultation proceeding. Moreover, they challenge the Local's claim that merely because it purported to dispute each and every allegation and fact pleaded by them, that this contrarian position necessarily meant that the Board had "no evidence" upon which it could base its decision.

[73] It is plain that the Local's entire argument is based on a premise that only *viva voce* testimony of witnesses can or does constitute "evidence." However, Local 1739 cannot succeed in this line of argument. In the context of a construction industry labour dispute, with the flexibility and avoidance of strict court like rules that the statutory provisions make clear was the Legislature's intention, this bald assertion is neither supported by the facts relating to this dispute nor by the legal framework intended to apply in its resolution. Contrary to the Local's assertions, there is no stipulation in s. 147 that would support the proposition that a higher "evidentiary" standard must be met in the case of "just cause" determinations than in the case of other disputes under the construction industry provisions of the Act, disputes that may also be dealt with through the use of expedited proceedings, nor is there any indication on the face of the statute of such a legislative intent. Rule 41.3 clearly permits the Board to proceed using the consultation process if the Board is of the view that the matter can be decided on the basis of the material before it, and taking account of the need for expedition in labour relations matters. In determining to proceed consultatively on the basis of the materials that were before it, the Board addressed both of these considerations.

[74] The Board had extensive pleadings of the parties and other documents before it. The Board as well heard two days of oral submissions of the parties. At the end of that process, the Board concluded that it had sufficient material to allow it to reach a decision. Moreover, submissions on the adequacy of the evidence before the Board on this consultation alone cannot ignore that there was a six-year history to this dispute, not relating to the particular project, but

relating to a whole series of documented complaints relating to other projects involving Local 1739. The Board had information on all of these matters present as well, as it commenced its consultation with the parties and its consideration of an appropriate disposition to the complaint through a process in which the Board takes an active role, and that has as many inquisitorial features to it as adversarial.

[75] The sufficiency and weight of all of that "evidence" are matters within the exclusive jurisdiction of the Board. As Guild and IBEW argued, this was not a case where there was no evidence. Evidence was placed before the Board, and a party to an expedited proceeding cannot frustrate the process by merely stating that it disputes all allegations of the other side and requires them to be strictly proven. The Legislature intended, where circumstances require, that the Board be empowered to deal with disputes expeditiously on the basis of the material before it. It intended to avoid the need for further evidence to be introduced in such cases to permit a speedy determination to be reached. Were we to accept this line of argument from the Local, it is evident that the Legislature's intent would be frustrated. In my view there was evidence before the Board that permitted it to make a determination following the consultation process. Consequently the Board did not exceed its jurisdiction by proceeding on the basis of the material that was before it. It was granted the specific jurisdiction to do so. Accordingly this ground of review by the Local also fails.

Did the Board deny the Local natural justice by failing to provide adequate reasons?

[76] The Board gave an oral decision at the conclusion of the consultation on the basis that there was enough uncontested material in the pleadings to permit it to reach a decision. Written reasons followed the next day. However, the Local complains that the Board's reasons simply list conclusions without explaining how those conclusions were reached, what material "uncontested" facts the Board relied on, and which of those uncontested facts supported a finding that IBEW had just cause to alter the Local's jurisdiction.

[77] The Local argues that even where they are not required by statute, reasons for a decision must be given by an administrative tribunal where there are substantial issues to be resolved and the decision is important for the affected parties, as it claims is the case here. It says a failure to provide meaningful reasons to support the decision is also a breach of the principles of natural justice that will warrant quashing the tribunal's decision: *Baker, supra*, at para. 43; *Lee v. College of Physicians and Surgeons* 2003 CanLII 41662 (ON S.C.D.C.), (2003), 66 O.R. (3d) 592 (Div. Ct.), at paras. 20-22; *Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board)*, [1997] N.S.J. No. 103 (C.A.), at para. 54, application for leave to appeal dismissed [1997] S.C.C.A. No. 265 (S.C.C.); *Kalin v. Ontario College of Teachers, supra*, at para. 60. The Local accepts that the Board has some discretion to determine how extensive its reasons need to be in a particular case, but stresses that it has an obligation to do more than state conclusions, particularly where there are factual disputes.

[78] It is true that there is no requirement under the Act that the Board issue any reasons for its decision. In this respect, the obligation of the Board to provide reasons is clearly different from the obligation of a court. The most obvious example of this is the Supreme Court's recognition of the significant differences between criminal courts and administrative tribunals, and that those differences, and the consequences to the persons affected may carry different levels of obligation to adequately explain the reasons for a result: *R. v. Sheppard* 2002 SCC 26

(CanLII), (2002), 210 D.L.R. (4th) 608 at para. 19 (S.C.C.). Nevertheless, even in the absence of a statutory requirement, in certain circumstances, such as where the decision has important significance for the individual, where there is a statutory right of appeal or in other such circumstances, the duty of procedural fairness will require the provision of at least some form of written explanation for a decision: *Baker, supra*, para. 43.

[79] In *Baker*, the Court held that there was a need for reasons, but showed that adequacy does not require court like reasons. There, the letter sent by a senior immigration officer to Mrs. Baker to advise her that she was to be deported contained no reasons. However, the notes of a junior immigration officer, which were provided to Mrs. Baker's counsel, were accepted by the Court as adequate reasons for the decision made by the senior immigration officer: *Baker, supra*, para. 44.

[80] IBEW and Guild asserted that the Board did provide sufficient and adequate reasons, and referred us to *Alistair McEachran v. The Ontario Labour Relations Board et al.*, [2005] OLRB Rep. January/February 182 (Div. Ct.) and *Allan et al. v. Attorney General for the Province of Ontario* (2005), 76 O.R. (3d) 616 (Div. Ct.). They also submitted that the Local should not be able to challenge the adequacy of the Board's reasons when it could have requested that the Board provide further or more detailed reasons, but failed to do so.

[81] In *McEachran*, Speyer J. observed that even though the Board's decision did reflect a careful analysis of the issue it was required to adjudicate, it was not required in its reasons to deal with every piece of evidence that was before it. In *Allen*, this Court again stressed that as the requirements of procedural fairness depend on the nature and functions of the decision-maker, the adequacy of the Minister's reasons in that case had to be considered in context. There, the Minister had before her the extensive and comprehensive material that had been submitted both by the applicants and the responding materials of the milk marketing board. This Court acknowledged that the Minister's reasons were brief but noted that they did explain her decision. Read in context, those reasons were adequate in the circumstances in which they were given, did set out the basis of the Minister's decision and met the standard of procedural fairness. They were sufficient reasons within the requirements of the applicable statutory regime. They were adequate because they permitted meaningful review to be undertaken.

[82] In *Doucette v. Minister of Human Resources Development* 2004 FCA 292 (CanLII), (2004), 245 D.L.R. (4th) 63, Nadon J.A. succinctly recognises at paras. 11 and 12 that it is the functional approach reflected in the decision of Binnie J. in *Sheppard* that must be the principal guide followed by this Court in assessing the adequacy of the Board's reasons:

It is obvious that the Board could have explained its reasoning more fully, but one can nonetheless discern the Board's reasoning from the language it has used. Consequently, as I am satisfied that the Board's reasons allow us to exercise our review function, I have no difficulty concluding that they are adequate.

To conclude on this point, I would add that our Court, like other courts of appeal, must be mindful of Binnie J.'s remarks in *Sheppard, supra*, that we should not intervene because we are of the opinion that the courts below failed to express themselves in a way acceptable to us. The reasons under review should be fairly considered and in performing that

exercise, we should, as Binnie J. suggests, examine the record on which the decision under review is based. We must guard ourselves from being too eager to conclude that reasons do not pass muster.

See also *Law Society of Upper Canada v. Neinstein*, 2007 CanLII 8001 (ON S.C.D.C.), 2007 CanLII 8001 (Div. Ct.) per Swinton J. at paras. 85-93.

[83] Since one of the principal functions that underlies the need for adequate reasons is to permit meaningful appellate review, *Sheppard* establishes that we are to engage in a consideration of the Board's reasons, in light of the record, to determine whether the reasons permit meaningful judicial review. In conducting that analysis, even if the Board could have explained its reasoning more fully, we must first discern whether the Board's reasoning is evident from the language it used. In evaluating the sufficiency of those reasons, this Court must also consider the institutional context in which the Board operates. We must remember that in the interests of achieving its labour relations objectives, it is frequently required to give "bottom line" decisions and to release reasons quickly after expedited proceedings. As well, where one of the parties is unsatisfied with either the result or the reasoning, it has a legislated right to ask for reconsideration as expressly contemplated in s. 114(1) of the Act.

[84] In rendering its decision, it is evident to me that the Board had in mind the obvious difficulty inherent in a situation of largely contested facts. It was with that in mind that it focused on whether there was sufficient uncontested material to allow it to reach a decision that was appropriate. In accepting that the contractor experienced peculiar problems on the Barrie Job - problems of productivity, administration of work practices and other problems as outlined in the pleadings - the Board did not make findings of fault, or determine which version of events it would accept. It simply found that the problems existed. Without attributing blame, it is evident that there was material before the Board that showed that those problems did exist. The diametrically opposed versions of facts and events put forward by the parties make that plain.

[85] As contractor, Guild was entitled to manage the installation of the electrical components of the job. The extent of the disagreements between the parties did indicate to the Board that the parties were incapable of working together to get the balance of the Barrie Job completed in a timely fashion. The Board was clear in making that finding. There was a basis for the Board to reach that conclusion. That basis was the pleadings of the parties. A review of those pleadings shows, without any finding of fault or responsibility of any of the three principal parties, that there had been a breakdown of any goodwill that may at one time have existed between Guild and Local 1739. Further, the extensive material filed by IBEW showed that serious disputes between IBEW and Local 1739 concerning other Barrie area projects had been left unresolved for years.

[86] Against that background of simple factual determinations reached following a consultation process, the Board found that IBEW had just cause "to assume authority to look after the job" and to delegate that authority as it deemed appropriate.

[87] Moreover, in reaching the findings that it did, and determining that IBEW had just cause to alter Local 1739's jurisdiction, the Board declined to permit any negative consequences of any material nature to be visited on the Local 1739 membership. It simply permitted Local 353 to assume authority over the job, but required that Local 1739 mobility provisions remain in effect as if the job continued to be performed under Local 1739's jurisdiction, and of equal

importance, insisted that all union remittances would continue to be made to Local 1739 on the same basis.

[88] At its essence the Board's reasons will comply with requirements of legal adequacy in this judicial review proceeding if they provide the basis for meaningful judicial review, in this case on a standard of patent unreasonableness. Stated briefly, in my view the Board did outline the foundation for its decision. The Board did intelligibly explain how and why it was reaching the decision it did. In doing so, it did provide a sufficiently adequate explanation of the process it engaged in, the conclusions it reached, on what it founded those conclusions, and the result of its conclusions. It did so with sufficient detail and clarity to more than adequately permit this Court to assess on this judicial review proceeding whether its decision was patently unreasonable.

[89] Finally, and in any event, the Local did not ask for further reasons, even though the Board indicated in light of the brevity of its reasons that further written reasons might follow. Neither did the Local ask the Board to reconsider its decision under s. 114(1) of the Act. Instead, the Local brought this application for judicial review before the Board had an opportunity to provide further reasons. The failure of the Local to avail itself of that potential remedy before commencing judicial review of all aspects of the matter is a factor this Court should consider when deciding whether to exercise its discretion to grant judicial review. In these circumstances, while it is not of any material weight in my decision on the adequacy of the Board's reasons, I accept the IBEW's submission that Local 1739 should not be entitled to complain about the brevity of the Board's reasons in an expedited proceeding when it had the opportunity to obtain further reasons or a reconsideration of the Board's decision, and chose instead to commence this proceeding.

Was it patently unreasonable for the Board to proceed by way of a consultation process rather than by a full hearing?

[90] It was the position of the Local that it was patently unreasonable for the Board to proceed by way of a consultation procedure on the limited basis of the pleadings of the parties and other documentary material without holding a hearing or permitting *viva voce* evidence or cross-examination. It asserts that Rule 41.3 must be read to permit the Board to choose not to hold a hearing only if the Board is satisfied that the case can be decided on the basis of the material before it. In this case it says that test cannot be satisfied. Apart from the Local's assertion of breaches of natural justice, where the pleadings reveal facts in dispute as in this case, it says the Board could never legally "be satisfied" that the case can be decided on the basis of the material before it. In its view, it is patently unreasonable to conclude otherwise.

[91] Moreover, the Local argued that the Board's procedural decision was patently unreasonable because it did not "balance" the need for expedition with natural justice. It says the Board could only properly "balance" expediency and the need for natural justice if it chose a process that provides the greatest possible measure of procedural fairness and that least impairs natural justice. It contends alternative procedures that would have better balanced expediency with natural justice could have included expedited hearings, allowing the submission of cross-examined affidavit evidence and written submissions on an expedited time frame, and other alternative evidence taking processes, used alone or in combination. In not adopting one or more of those or other similar procedures and instead proceeding as it did by consultation and on the

basis of the filed pleadings, the Local says the Board's procedural decisions were patently unreasonable.

[92] In contrast, IBEW and Guild argue that the legislation makes it clear that the Board had jurisdiction to proceed by way of consultation. Guild stressed that it was well understood by the parties in this case that the matter needed to be resolved quickly. As such they ask how it could have been patently unreasonable for the Board to decide to proceed by consultation, particularly when that consultation process is specifically contemplated by the Act.

[93] The Local's disagreement with the type of hearing process that the Board determined was appropriate is central to its complaint. However, the Supreme Court has held that a tribunal's choice of procedure is entitled to deference: *Prasad v. Canada (Minister of Employment and Immigration)*, 1989 CanLII 131 (S.C.C.), [1989] 1 S.C.R. 560 at 568-9. Generally, in matters of procedure, the Board must be regarded as "the master of its own house", and "the greatest level of deference should be afforded to it on procedural matters": *Re Cedarvale Tree Services Ltd. and L.I.U.N.A., Loc. 183* (1971), 22 D.L.R. (3d) 40 (Ont. C.A.) at 49; *Québec Téléphone v. Syndicat des agents de maîtrise de Québec Téléphone* (1997), 221 N.R. 312 (F.C.A.), at para 8; *Telus Communications Inc. v. Telecommunications Workers Union*, [2005] F.C.J. No. 1253 (C.A.), at paras. 59-60.

[94] Further, in an analogous case under federal jurisdiction, the Federal Court of Appeal concluded in *Raymond v. Canadian Union of Postal Workers*, [2003] F.C.J. No. 1663, at para. 4 that where a legislative provision under the Canada Labour Code expressly permitted the Canada Industrial Relations Board to dispose of any matter before it without holding an oral hearing, the Board's choice of procedure was a matter of internal policy that was beyond the scope of judicial review barring exceptional circumstances.

[95] The record demonstrates that the Board considered the procedural options that were available to it and consciously chose, having considered those alternatives and the circumstances of this particular labour dispute, to proceed as it did by way of a consultation in reliance on the limited pleadings based "evidence" that was before it. While the Local seems to have been intent on requiring that full blown, and likely protracted, adversarial proceedings take place to permit it to contest IBEW's reassignment of jurisdiction over the Barrie Job to Local 353, the Board chose to adopt the more expeditious consultation procedure in the circumstances of this dispute. Its Rules made clear that the Board was entitled to do so, even though it explicitly recognized that a consultation might not always be the most thorough or perfect process for deciding difficult cases, and even though this might result in it reaching a decision without permitting the introduction of evidence beyond the assertions of the parties as set out in their pleadings.

[96] The Board is given the authority to balance the need for full-blown natural justice on the one hand against expedition on the other. The Vice Chair acknowledged that is an extremely important balancing act in the field of labour relations in which a delay in achieving a resolution of the dispute could have serious impact, not only on the parties, but also on the need to bring the Barrie Job to completion. The standard of review applicable to this procedural determination of the Board is patent unreasonableness. There is no foundation in the matter before us for a finding that the Board's determination violates that standard of review. It was not patently unreasonable for the Board to proceed in this instance by way of consultation rather than by way of a full hearing.

Was the Board's decision on the merits patently unreasonable?

[97] The final issue on this judicial review is the merits of the Board's decision that IBEW had just cause under s. 147(1) of the Act to assume jurisdiction from the Local over the Barrie Job. The Local concedes that the patently unreasonable standard applies but claims that the Board rendered a patently unreasonable decision on the merits. It says that the Board's failure to provide adequate reasons for its decision not only results in a denial of natural justice, but also makes the decision patently unreasonable. As a result of my decision that the Board's reasons were not inadequate the only question that remains is whether the Board's decision was patently unreasonable.

[98] In this case, Local 1739 argued that the Board failed to set out any factual basis for its decision, with the result that this Court cannot know how or on what basis the Board reached its conclusions. For the reasons outlined in the preceding sections of these reasons, however, in my view the Board did adequately explain its reasons and did outline the factual basis that permitted it to reach the decision it did, founded on the uncontested facts in the matter. Contrary to the Local's position, I have traced the Board's line of analysis from the "evidence" that was before the Board to the conclusions in its reasons, and have outlined a tenable explanation for those conclusions: *Ryan v. Law Society of New Brunswick*, supra, at para. 55.

[99] In addition, however, the Act requires the Board to consider certain factors when considering a complaint under s. 147, including the trade union constitution, the ability of the local trade union to carry out its duties under the Act, the wishes of the members of the local trade union, and whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems. The Local says that the words "shall consider" are imperative. The Board may give each of these factors great weight, little weight or no weight, but it cannot ignore them. Here, it says the Board made no reference in its decision to its findings on any of these factors or even to the factors themselves. As such, it claims to be unable to discern whether the Board addressed the statutory factors it was required to consider in determining whether IBEW had "just cause" within the meaning of s. 147(1) to assume and reassign the Local's jurisdiction over the Barrie Job to Local 353.

[100] A tribunal is not required to refer to every factor it considers in the course of making a decision, but the thoroughness and adequacy of its reasons may be taken into account in considering whether it complied with a statutory precondition that it consider particular factors.

[101] It is evident that the Board did not specifically enumerate the "just cause" factors, or reiterate them in its reasons, or indicate specifically that it had considered each of those factors. The Local asserts that this can lead to no other conclusion but that the Board did not consider those factors. The Local says this gives rise to jurisdictional error for which the Board's decision must be quashed: *Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn of Nipawin* (1973), 41 D.L.R. (3d) 6 (S.C.C.), at pp. 11-12; *Re 538414 Ontario Ltd. v. London & District Service Workers Union, Local 220*, supra, at p. 367.

[102] In my view this is not only an incorrect but also an overly broad proposition. It not only fails to recognize the factors that the Board evidently did consider in reaching its conclusion, and the purposes that underlie the requirement that those factors should be considered, but also the circumstances in which the Legislature likely anticipated that such considerations would arise.

[103] The stipulation that the Board shall consider the trade union's constitution seems focused on whether it lay within the legal power of the parent union to make or stipulate such a change. Interestingly, while the Board is required to consider the trade union constitution, subsection 147(4) explicitly relieves the Board from being bound by the trade union constitution in deciding whether there is just cause for an alteration. Here, there was no claim by the Local that it was beyond the power of the parent trade union under the constitution to alter the Local's jurisdiction over the Barrie Job in the manner that it did. Moreover, the fact that the provision stipulates that the Board is not bound by the trade union constitution suggests that a decision made by the Board that just cause existed for an alteration of a local trade union's jurisdiction, even in the face of contrary provisions in the trade union constitution, could not be a foundation for a conclusion by a court that the Board's decision was patently unreasonable.

[104] Contrary to the Local's assertion, it seems evident on the face of the Board's decision that it did give consideration to the factor of "the ability of the local trade union to carry out its duties under this Act." In the Board's reasons, the Vice Chair stated that:

A point was reached in which the IU reached the justifiable conclusion that the contractor and the Local could not work together satisfactorily to complete the job in the manner required by the contractor. At some point it was justified to conclude that neither the stewards nor [sic] the local leadership could administer or adopt [sic] their practices to allow the contractor to manage the job in the way it was entitled to.

[105] To my mind, this finding by the Board clearly expresses the Board's conclusion, at least with respect to the Barrie Job, that the Local was no longer able to carry out its duties under the Collective Agreement. Certainly the February 2006 correspondence from IBEW to the Local makes clear that the parent union had reached this conclusion. It was the fact that it reached this conclusion that caused it to assign the Local's jurisdiction over the completion of the Barrie Job to Local 353.

[106] The Board also appears to have considered the factor of whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems and the requirement that it give consideration to the wishes of the members of the Local when it tailored its order to take into consideration the interests of the Local's members. It is evident that the Board did give considerable thought to the interests of the local members in its disposition of the matter even if it did not specifically consult them on their wishes. Here, the result of the Board's determination was a reassignment of union management of the Barrie Job that actually left the Local members in a better position than they were in before that limited jurisdiction was reassigned. Not only did the Board preserve the priority of Local 1739 members to be the last to lose their jobs as the project wound down, but it also ensured that the economic health of the Local would not be affected by requiring that union dues continue to be paid to Local 1739 in spite of the change in jurisdiction. In fact the local members were marginally better off economically because the alteration of jurisdiction resulted in them being considered to be "travelers" in their home jurisdiction, with the entitlement to travel related dues that accompanied that altered status.

[107] Moving on to the substantive elements of the Board's decision, the Local submits that it is patently unreasonable because it failed to recognize or deal with the conflicting allegations in the parties' pleadings. The Respondents argue, however, that the Local appears to apply a much

lower standard, complaining that the Board failed to resolve conflicts in the evidence or deal with conflicting allegations in the pleadings – matters that the Respondents argue were not consequential to the decision.

[108] In my view there was no need to resolve or deal with those conflicting facts in the limited context of the limited decision that the Board issued. It may be true that a failure to recognize and resolve conflicting evidence in regard to material facts will render a tribunal's decision patently unreasonable, but of necessity that can only be the case where the decision reached by the tribunal or decision-maker was grounded in those unresolved conflicting facts.

There may well be many findings of fact that the Board could not have made in the course of deciding this case without resolving some or all of the contested facts between the parties, but the Board carefully avoided making findings that would have required it to choose between those contested positions. Rather, the decision of the Board here was not grounded in those unresolved conflicting facts. It was founded on the evident inability of the parties to cooperate, for whatever multiplicity of present or past-accumulated reasons, to get the Barrie Job completed on schedule.

[109] The "patently unreasonable" standard requires more than a failure by the Board to resolve the conflicting allegations and factual assertions between the parties. It requires more than the bald assertion that the Board must not have considered the s. 147(2) factors. It requires that the Local demonstrate that the decision is "clearly irrational", or suffers from a defect that is "immediately apparent, or so obvious that it demands intervention by the court on review", that "once identified, can be explained simply and easily": *Canada (Attorney General) v. PSAC*, 1993 CanLII 125 (S.C.C.), [1993] 1 S.C.R. 941, at pp. 963-964; *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86 (CanLII), [2002] 4 S.C.R. 710 at para. 6.

[110] In assessing the Board's decision against the standard of patent unreasonability, I accept as well, that the decision reached by the Board imposed the least invasive result that it could have to ensure the completion of the project in the face of a disintegrating working relationship between the parties, while at the same time protecting the economic interests of both the Local and its members by imposing the restrictions it did on the alteration of Local 1739's jurisdiction. In terms of result, any fair assessment of the consequences of the Board's decision would admit that it protected the monetary and job security concerns of the Local's members, but at the same time addressed the legitimate labour relations concerns between the IBEW and Guild and the Local.

[111] In this case the Board did set out the factual basis for its decision. It did not need to resolve the conflicting allegations of material fact in the parties' pleadings. It did not need to make specific reference to all of the considerations described in s. 147(2). There was clearly a rational basis for the decision reached by the Board. The decision is not patently unreasonable. It was a sound and sensible decision reached by the Board in circumstances of acrimony that permitted the appropriate labour relations objective to be achieved, with the least intrusion on the rights of the Local's members. There is no basis for us to disturb that result.

Conclusion

[112] The application for judicial review is dismissed. The Ontario Labour Relations Board and the Attorney General do not seek costs and none are awarded. If the remaining parties are unable to agree on costs, they may make written submissions within 30 days of the release of this decision.

0840-05-U (Court File No. 71/07) Stéphane Verreault v. Ontario Labour Relations Board, Teamsters Local Union 419, United Association of Journeypersons and Apprentices of the Plumbing and Pipefitting Industry of the US and Canada (787)

Duty of Fair Representation – Evidence – Judicial Review – The standard of review with respect to the merits of the Board's decision was patent unreasonableness – The court found that the Board's decision on the merits and in its reconsideration were entirely reasonable: the Board concluded the union could not continue to represent the applicant because of his antagonistic and uncooperative attitude (which was unwarranted); and there was ample evidence on which to base that conclusion – The court also found no denial of procedural fairness in the manner in which the Board proceeded by consultation – A motion to introduce fresh evidence was also dismissed – Application dismissed

Superior Court of Justice (Divisional Court), Lane, Lederman, Swinton JJ., June 25, 2007.

ENDORSEMENT

[1] The applicant has brought an application for judicial review of two decisions of the Ontario Labour Relations Board ("Board"). In its decision of May 30, 2006, the Board dismissed an unfair labour practice complaint in which the applicant alleged that his union, Teamsters Local 419 ("Union"), violated the duty of fair representation set out in s. 74 of the *Ontario Labour Relations Act, 1995*, S.O. 1995, c.1. In a decision dated September 5, 2006, the Board dismissed a request for reconsideration.

[2] The applicant was terminated from his employment with United Association of Journeypersons and Apprentices of the Plumbing and Pipefitting Industry of the US and Canada Local 787 ("Employer") on November 19, 2002. The Union filed a grievance, which was referred to arbitration. Prior to the resolution of the grievance, the applicant engaged in a series of website postings and emails that attacked the Employer and its senior official. On September 23, 2003, the Employer advised the applicant that if he were reinstated to employment, he would be immediately terminated due to his further misconduct. The arbitrator took jurisdiction over these allegations and treated them as constituting another termination.

[3] The Employer conceded that it did not have jurisdiction to terminate the applicant in November 2002. The arbitrator ordered that the applicant be paid damages for the period November 2002 to September 23, 2003.

[4] In June 2005, the applicant filed a complaint with the Board alleging a breach of the duty of fair representation found in s. 74 of the Act. This section requires that a trade union "not act in a manner that is arbitrary, discriminatory or in bad faith" in the representation of members of a bargaining unit. The applicant filed a second complaint on July 18, 2005. The Board ordered the complaints be consolidated, but refused to proceed with them until the grievance process was concluded.

[5] On November 7, 2005, the trade union advised the Board that it was withdrawing the grievance from arbitration. It stated,

The Union is not satisfied that the negative comments made by Mr. Verreault are true. This fact, combined with the view that the union takes of its chances of securing further benefits for Mr. Verreault from the arbitration process, are factors which deter the union from taking further steps on behalf of Mr. Verreault. In addition, it has become abundantly clear that Mr. Verreault cannot or will not accept the advice or direction of the union or its counsel.

[6] A consultation took place before the Board on April 19, 2006. In its decision issued May 30, 2006, the Board extensively reviewed the facts, which it found were not substantially in dispute. It then reviewed the applicable case law, noting that a grievor's level of cooperation is one factor that a union can take into consideration in determining whether to continue with a grievance.

[7] The Board made a number of findings: that a Union represented the applicant in an "appropriate, if not exemplary manner" in 2002 when he was terminated during his probationary period; that the Union represented the applicant "ably" in the arbitration of the termination in November 2002; that the Union acted "reasonably and appropriately" when it proposed to proceed on the basis of an agreed statement of facts in the arbitration of the third termination; and that the applicant had become quite antagonistic to the Union without reasonable grounds for his complaints. The Board stated (at para. 52):

I find that Mr. Verreault's antagonism towards and distrust of the Union was unwarranted. The Union's representation of Mr. Verreault was reasonable and appropriate. Mr. Verreault had no reasonable or legitimate grounds for becoming uncooperative with the Union. Mr. Verreault's antagonistic and uncooperative conduct towards the Union made it impossible for the Union to continue to represent Mr. Verreault. The Union's representation of Mr. Verreault and the Union's ultimate decision that it could not continue to represent Mr. Verreault do not amount to a violation of section 74.

[8] The Board rejected the request for a reconsideration, as the grounds put forth did not reveal an obvious error in the decision, nor did they raise important policy issues or rest on new evidence that could not have been obtained with due diligence.

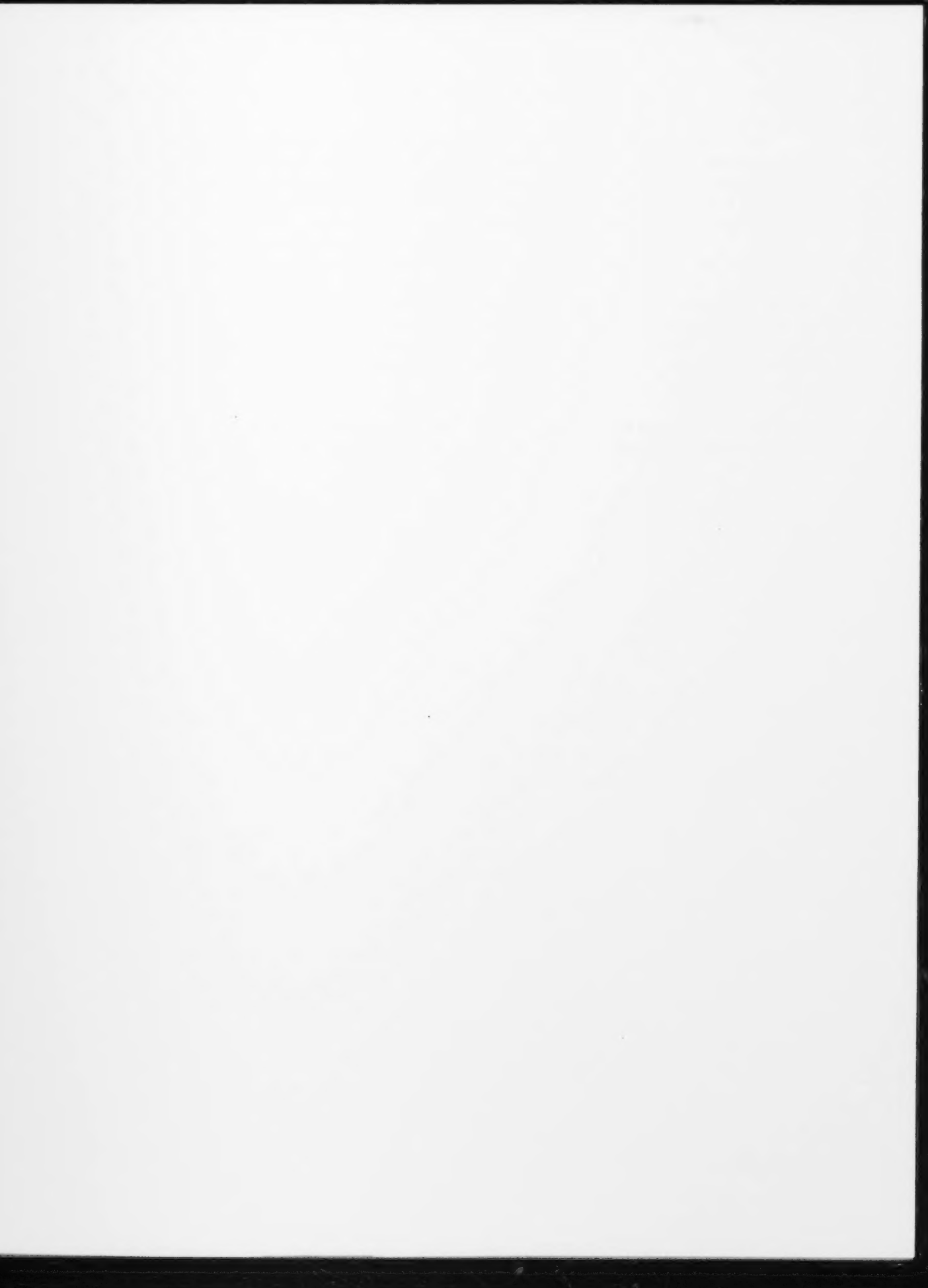
[9] The standard of review with respect to the merits of the decisions is patent unreasonableness, given the two privative clauses in ss. 114(1) and 116 of the Act, the expertise of the Board in matters of labour relations, and the nature of the question here – the application of the Board's home statute to the particular facts of this case (*Collier v. Amalgamated Transit Union, Local 113* [2004] O.J. No. 5313 (January 5, 2005) (Div. Ct.) at para. 2).

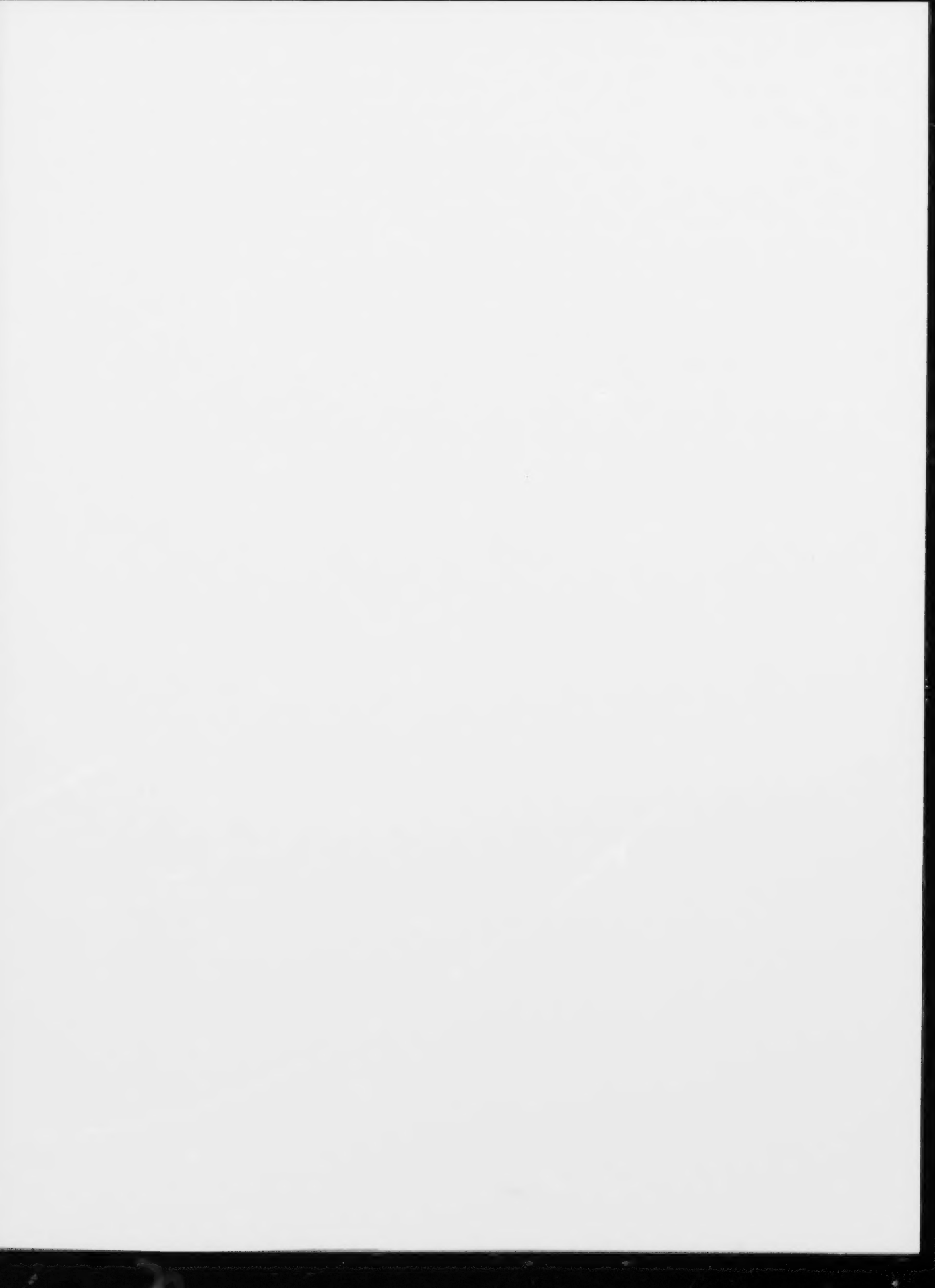
[10] Both the Board's decision on the merits and its decision on reconsideration were entirely reasonable. The Board applied the existing case law on s. 74 to the facts before it. It concluded that the Union could not continue to represent the applicant because of his antagonistic and uncooperative attitude, which was unwarranted. There was ample evidence on which it could come to that conclusion. The whistleblower jurisprudence that the applicant invokes was not applicable to the Board's determination whether s. 74 had been breached by the Union.

[11] The applicant submits that the Union acted arbitrarily in not investigating the truth of his allegations against the Employer. However, that issue does not appear to have been raised before the Board during the consultation. In any event, it is premature, as the Union was in the course of taking the grievance about his termination to arbitration and had not yet completed its preparations for a hearing that lay in the future.

[12] The applicant also submits that he was denied procedural fairness by the manner in which the Board proceeded. The Board is not required to hold a hearing when considering a complaint under s. 74 (see s. 99(3)). Pursuant to s. 99(5), the Board may make any final order that it considers appropriate after "consulting with the parties". In any event, the applicant was given the opportunity to present evidence and make submissions. He has not demonstrated, by giving precise details, that he was denied an opportunity to make his case. There was no denial of procedural fairness by the Board.

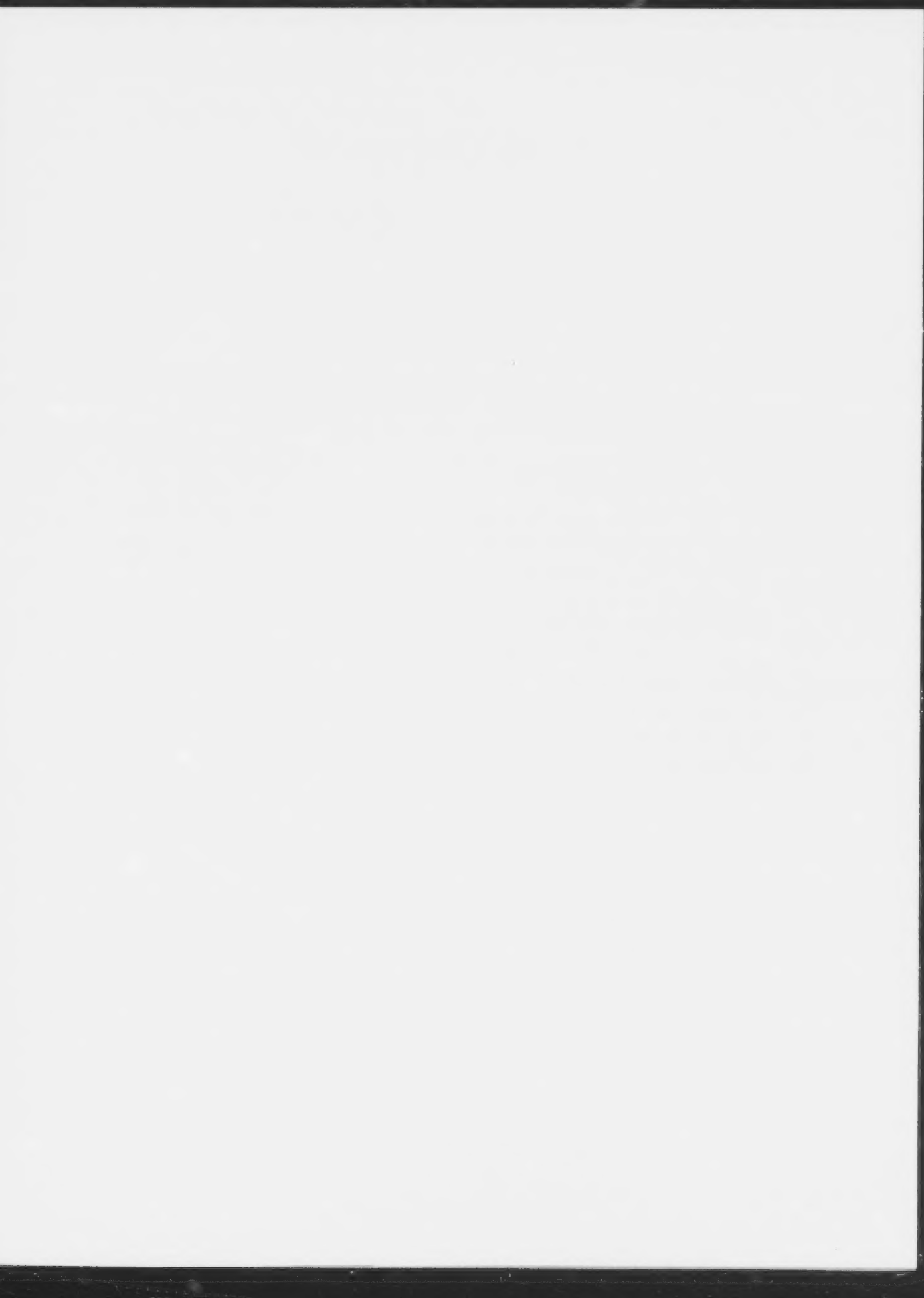
[13] Therefore, the application for judicial review is dismissed. The Board is not seeking costs, they may make brief written submissions within 30 days of the release of this decision.





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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING APRIL 2007

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1603-06-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. AXA Electric Inc. (Respondent)

Unit: "all electricians, and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices and communication cable installers in the employ of AXA Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all electricians, and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices and communication cable installers in the employ of AXA Electric Inc. in all sectors of the construction industry in the County of Brant, the Regional Municipality of Haldimand-Norfolk, the Regional Municipality of Niagara, the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (24 employees in unit)

2445-06-R: Labourers' International Union of North America, Local 493 (Applicant) v. B.E.S.T. Construction Inc. (Respondent) v. The United Brotherhood of Industrial, Construction, Maintenance and Service Workers of Ontario, Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 2486 (Intervenors)

Unit: "all construction labourers in the employ of B.E.S.T. Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of B.E.S.T. Construction Inc. in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

3959-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Aquasafe Mechanical Limited (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Aquasafe Mechanical Limited in all sectors of the construction industry other than industrial, commercial and institutional sector, in the County of Simcoe and the District Municipality of Muskoka, save and except non-working foremen and persons above the rank of non-working foreman" (17 employees in unit)

4001-06-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Grand Brook Homes and/or Grand Brook Homes/770373 Ontario Limited and/or 770373 Ontario Limited c.o.b. as Grand Brook Homes and/or 707931 Ontario Limited (Respondent)

Unit: "all construction labourers in the employ of Grand Brook Homes and/or Grand Brook Homes/770373 Ontario Limited and/or 770373 Ontario Limited c.o.b. as Grand Brook Homes and/or 707931 Ontario Limited in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, other than the industrial,

commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

0005-07-R: Brick and Allied Craft Union of Canada (Applicant) v. Grelar Masonry (Respondent)

Unit: "all bricklayers, stonemasons and plasterers and their respective apprentices, improvers, and working forepersons in the employ of Grelar Masonry in all sectors of the construction industry within a radius of 33 kilometers (approximately 20 miles) of the North Bay post office save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

0021-07-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Applicant) v. JMR Electric Ltd. (Respondent)

Unit: "all electricians and electricians' apprentices, linemen and linemen apprentices, network cabling specialists, network cabling specialists' apprentices, and communication cable installers; all sheet metal workers and sheet metal workers' apprentices; all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices; and all construction labourers, in the employ of JMR Electric Ltd. in all sectors of the construction industry in the Counties of Essex and Kent, the County of Lambton, the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, the County of Wellington, the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham in all sectors of the construction industry, save and except non-working foremen and persons above the rank of non working foreman" (145 employees in unit)

0068-07-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. JMC Eavestroughing (Respondent)

Unit: "all sheet metal workers and sheet metal apprentices, and all employees engaged in sheet metal work in the employ of the responding party in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0108-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Ganotec-Mason, a Partnership (Respondent)

Unit: "all construction labourers in the employ of Ganotec-Mason, a Partnership in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Ganotec-Mason, a Partnership, in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0179-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Toronto Excavating & Construction Ltd. (Respondent)

Unit: "all construction labourers in the employ of Toronto Excavating & Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Toronto Excavating & Construction Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering

in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0219-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Langen Electric Ltd. (Respondent)

Unit: "all construction labourers, electricians, and persons engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing or maintaining of same in the employ of Langen Electric Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

0239-07-R: Plumbers Residential Council, Ontario (Applicant) v. Bay Point Mechanical Inc. (Respondent)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Bay Point Mechanical Inc., in all sectors of the construction industry other than the industrial, commercial and institutional sector in the County of Dufferin, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

Bargaining Agents Certified Subsequent to Vote

2188-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Liberte Natural Foods Inc. (Respondent)

Unit: "all employees of Liberte Natural Foods Inc. in the City of Brampton, Ontario, save and except supervisors and those above the rank of supervisor, drivers and office and clerical staff" (30 employees in unit)

Number of names of persons on revised voters' list	44
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	10

2534-06-R: Ontario Nurses' Association (Applicant) v. Guelph Community Health Centre (Respondent)

Unit: "all the registered nurses and nurses with temporary certificate of registration engaged in a nursing capacity by Guelph Community Health Centre in the City of Guelph, Ontario, save and except the Primary Health Manager and persons above the rank of Primary Health Manager" (7 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on	0

voters' list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	0

2694-06-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Lafarge Paving and Construction Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervenor)

Unit: "all construction labourers employed in the County of Peterborough, save and except non-working foremen, persons above the rank of non-working foreman, students employed for the school vacation period, office clerical, engineering staff, permanent employees employed at the employer's quarry shop and plant operations" (15 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	4
Number of ballots marked in favour of Intervenor	0
Number of ballots segregated and not counted	0

2719-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 853 - Sprinkler Fitters of Ontario (Applicant) v. Siemens Building Technologies Limited (Respondent)

Unit: "all journeymen and apprentice sprinkler fitters in the employ of Siemens Building Technologies Limited in and out of the City of Brampton in the Province of Ontario, save and except supervisors and persons above the rank of supervisor" (2 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

2810-06-R: United Bottlers Workers' Union (Applicant) v. Coca Cola Bottling Company Canada (Respondent) v. United Food & Commercial Workers International Union, Local 175 (Intervenor)

Unit: "all employees of Coca Cola Bottling Company Canada working at or out of its Plant in the City of Hamilton, save and except 3 persons employed as 3 Confidential Secretaries to Sales Manager(s), 1 Confidential Secretary to the Area Sales Manager, Sales Execution Specialists, Account Managers, Dispatcher, Plant Supervisors and persons above the rank of Supervisor" (109 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	124
Number of persons who cast ballots	117
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	114
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	60
Number of ballots marked in favour of intervenor	53
Number of ballots segregated and not counted	1

3697-06-R: Labourers' International Union of North America, Local 625 (Applicant) v. Bravo Cement Contracting (Windsor) Inc. (Respondent) v. Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 (Intervenor)

Unit: "all construction labourers employed by Bravo Cement Contracting (Windsor) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by the applicant's existing collective agreement with Bravo Cement Contracting (Windsor) Inc." (6 employees in unit) (*Clarity Note*) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked in favour of intervenor	0
Number of ballots segregated and not counted	0

3700-06-R: International Association of Machinists and Aerospace Workers (Applicant) v. Excel Technologies Limited (Respondent)

Unit: "all employees of Excel Technologies Limited, in the Town of Milton, Ontario, save and except supervisors, persons above the rank of supervisor, office and sales staff" (28 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	1

3742-06-R: UNITE HERE (Applicant) v. The Suites at 1 King West Inc., and Stinson Hospitality Inc. and 2076564 Ontario Inc. (Respondent)

Unit: "all employees of The Suites at 1 King West Inc., and Stinson Hospitality Inc. and 2076564 Ontario Inc. engaged in housekeeping at 1 King Street West, Toronto, Ontario, save and except supervisors and persons above the rank of supervisor" (58 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	107
Number of persons who cast ballots	95
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	49
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	42
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	53

3796-06-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Rieter Automotive Canada, Carpet (Respondent)

Unit: "all employees of Rieter Automotive Canada, Carpet in the City of London, Ontario, save and except supervisors, those above the rank of supervisor, quality coordinators, office, clerical and sales staff" (142 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	141
Number of persons who cast ballots	117
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	109
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	107
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	8

3814-06-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (Caw-Canada) (Applicant) v. Beendigen Inc. (Respondent)

Unit: "all employees of the Beendigen Inc. in the City of Thunder Bay, save and except Executive Director and Finance/HR Officer" (29 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	19

Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

3839-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. TWD Roads Management Inc. (Respondent)

Unit: "all employees of TWD Roads Management Inc. working in and out of the counties of Essex, Kent, Elgin and Lambton, Ontario save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, and persons regularly working not more than 24 hours per week" (31 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	54
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	1

3877-06-R: Ontario Public Service Employees Union (Applicant) v. York University (Respondent)

Unit: "all employees of York University employed as Casual Instructors on individual contractually limited teaching assignments at the York University English Language Institute (YUELI) in the City of Toronto, save and except supervisors and persons above the rank of supervisor, persons employed in a confidential capacity in matters related to labour relations, and persons for whom any trade union held bargaining rights as of March 9, 2007" (10 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

3878-06-R: Labourers' International Union of North America, Local 506 (Applicant) v. 1659354 Ontario Ltd. c.o.b. as Consilvio (Respondent) v. Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 (Intervenor)

Unit: "all construction labourers in the employ of 1659354 Ontario Ltd. c.o.b. as Consilvio in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of 1659354 Ontario Ltd. c.o.b. as Consilvio in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and

except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

3946-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. TWD Roads Management Inc. (Respondent)

Unit: "all employees of TWD Roads Management Inc. working in and out of the Counties of Peterborough, Renfrew and Hastings, the City of Kawartha Lakes, the Township of Addington Highlands and the Municipality of South Algonquin, Ontario, save and except supervisors, persons above the rank of supervisor and office, clerical and sales staff and persons regularly working not more than twenty-four (24) hours per week" (36 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	72
Number of persons who cast ballots	65
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names do not appear on voters' list	12
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	18

3978-06-R: Niagara Health Care & Service Workers Union Local 302 affiliated with the Christian Labour Association of Canada (Applicant) v. Shalom Manor Non-profit Seniors Assisted Living Apartments operating as Shalom Gardens (Respondent)

Unit: "all registered practical nurses and graduate registered practical nurses employed by Shalom Manor Non-Profit Seniors Assisted Living Apartments operating as Shalom Gardens in a nursing capacity, save and except supervisors and those above the rank of supervisor, office and clerical staff" (7 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5

Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

4069-06-R: UNITE HERE (Applicant) v. Aramark Canada Ltd. (Respondent)

Unit: "all employees of Aramark Canada Ltd., at the Scarborough Campus of the University of Toronto, 1265 Military Trail, in the City of Toronto, save and except senior supervisors, persons above the rank of senior supervisor, executive chef, office and clerical staff" (39 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	1

4144-06-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. PXL Cross Linked Foam Corporation (Respondent)

Unit: "all employees of the PXL Cross Linked Foam Corporation in Cobourg, Ontario, save and except Managers and those persons above the rank of Manager, sales staff, office staff, maintenance staff and clerical staff" (23 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	3

Applications for Certification Dismissed Without Vote

0065-07-R: International Union of Operating Engineers, Local 793 (Applicant) v. TWD Roads Management Inc. (Respondent)

Unit: "all employees of TWD Roads Management Inc. working in and out of the townships of Severn, Springwater and Clearview, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, and persons regularly employed for not more than 24 hours per week" (34 employees in unit)

0256-07-R: Labourers' International Union of North America, Local 625 (Applicant) v. Seal-On Paving Ltd. (Respondent)

Unit: "all truck drivers in the employ of the Seal-On Paving Ltd. at and out of the City of Chatham, save and except supervisors and persons above the rank of supervisor, and save and except persons covered by a subsisting collective agreement." (5 employees in unit)

Applications for Certification Dismissed Subsequent to Vote

3111-06-R: International Union of Painters and Allied Trades, Local Union 1494 (Applicant) v. D & M Glass & Mirror Ltd. (Respondent)

Unit: "All Glaziers and Glaziers Apprentices in the employ of the Responding Party: In the Industrial, Commercial and Institutional sector of the Construction Industry in the Province of Ontario, all Glaziers and glaziers apprentices in the employ of the Responding Party in Board Area 1 in all other sectors of the construction industry, save and except the Industrial, Commercial and Institutional sector, save and except non-working foremen and persons above the rank of non-working foremen." (9 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

3463-06-R: Health Care and Service Workers Union Local 304 affiliated with the Christian Labour Association of Canada (Applicant) v. Brock Mission (Respondent)

Unit: "all employees of Brock Mission in the City of Peterborough, Ontario, save and except supervisors, persons above the rank of supervisor and office and clerical staff" (32 employees in unit)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	20
Number of ballots segregated and not counted	2

3509-06-R: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Hanrahan Youth Services Inc. (Respondent)

Unit: "all employees of Hanrahan Youth Services Inc. in the City of Toronto and the City of Brampton, save and except managers and persons above the rank of manager" (60 employees in unit)

Number of names of persons on revised voters' list	75
Number of persons who cast ballots	51

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	36

3563-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Weetabix of Canada Limited (Respondent)

Unit: "all Quality Control Technicians employed by Weetabix of Canada Limited at its Cobourg Plant, save and except Forepersons, persons above the rank of Foreperson, Office and Sales, Research and Development Technicians, Salaried Senior Maintenance Technicians and Contract Employees" (6 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

3739-06-R: Seafarers' International Union of Canada/Syndicat international des marins canadiens (Applicant) v. Marine Clean Limited (Respondent)

Unit: "all employees of Marine Clean Ltd. of Niagara Falls, wherever working, on board ship or on land, including labourers and drivers, save and except office staff, senior project managers, project managers and call-in employees" (11 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	2

3752-06-R: Teamsters Local Union 91 (Applicant) v. Ottawa Citizen (Ottawa Citizen, a Division of CanWest MediaWorks Publications Inc.) (Respondent)

Unit: "all motor route drivers and dependent contractors employed by the Ottawa Citizen and working in the County of Renfrew, County of Lennox and Addington, County of Frontenac, United Counties of Leeds and Grenville, County of Lanark, United Counties of Stormont, Dundas, and Glengarry, the Regional Municipality of Ottawa-

Carleton, and the United Counties of Prescott and Russell excluding coordinators, supervisors, and persons above the rank of supervisor" (116 employees in unit)

Number of names of persons on revised voters' list	182
Number of persons who cast ballots	103
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	101
Number of segregated ballots cast by persons whose names do not appear on voters' list	2

3849-06-R: Teamsters Local Union No. 419 (Applicant) v. Olon Industries (Respondent)

Unit: "all employees of Olon Industries in the Regional Municipality of Halton, save and except supervisors, persons above the rank of supervisor, customer service, office, and sales staff" (52 employees in unit)

Number of names of persons on revised voters' list	70
Number of persons who cast ballots	69
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54
Number of segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	37
Number of ballots segregated and not counted	15

3882-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1280439 Ontario Inc. operating as Forest Hill Homes; Promenade Park II Limited; Forest Hill Homes Cornell Limited; Promenade Park Limited; Forest Hill Homes (Mississauga) Ltd.; Hillside at York Mills III Limited; Forest Hill Homes (Maple) Ltd.; North Castlemore Developments Inc. and Forest Hills Homes (Fletcher's) Ltd. (Respondent) v. Universal Workers Union L.I.U.N.A. Local 183 (Intervenor)

Unit: "all construction employees engaged in the on-site construction of all types of low-rise housing and their natural amenities up to the date of closing or date of occupancy, which ever occurs first, or said housing or part thereof while working in the County of Simcoe and in O.L.R.B. Geographic Area No. 8 namely the City of Toronto, the Regional Municipality of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquering and Trafalgar and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and such other geographic areas to which the subsisting collective agreement between the Responding Parties and Universal Workers Union, L.I.U.N.A. Local 183 may apply to pursuant to Schedule A Article 8 and/or any other appendices thereof, save and except employees employed as non-working foremen, watchmen and engineering staff" (10 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of Intervenor	10

3957-06-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Lift Technologies Inc. (Respondent)

Unit: "all employees of Lift-Tek Elecar Masts Lift Technologies Inc. in the Village of Aberfoyle in the Township of Puslinch, save and except managers, office, and sales." (57 employees in unit)

Number of names of persons on revised voters' list	59
Number of persons who cast ballots	57
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	50
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	40
Number of ballots segregated and not counted	7

3969-06-R: Teamsters Local Union No. 938 (Applicant) v. Lakeport Brewing (Respondent)

Unit: "all Telesales Representatives and Warehouse Clerks employed by Lakeport Brewing in the Province of Ontario" (6 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

3970-06-R: Labourers' International Union of North America, Local 506 (Applicant) v. Lock-Wall Forming Ltd. and Diplock Floor Ltd., Core-Cut Inc. (Respondents)

Unit: "all construction labourers in the employ of Lock-Wall Forming Ltd., Diplock Floor Ltd. or Core-Cut Inc. (i) in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and; (ii) in all other sectors of the construction industry save and except the ICI sector in Board Areas # 8, 9, 18 and 27 save and except non-working forepersons and person above the rank of non-working foreperson" (15 employees in unit) (Clarity Note)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked in favour of Intervenor	13
Number of ballots segregated and not counted	7

3989-06-R: United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Applicant) v. Innvest GP Ltd. (Respondent)

Unit: "all employees of Innvest GP Ltd. in the City of Mississauga, save and except office and clerical staff, persons at or above the rank of department manager, employees at 100 Britannia Road East and employees for whom the union already holds bargaining rights." (6 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

4186-06-R: Southwestern Ontario Health Care and Service Workers Local 303, affiliated with Christian Labour Association of Canada (Applicant) v. Chatham-Kent Health Alliance (Respondent) v. Ontario Public Service Employees Union Local 132 (Intervenor)

Unit: "all office and clerical employees of the Chatham-Kent Health Alliance employed in the Municipality of Chatham-Kent, save and except supervisors, persons above the rank of supervisor, human resources staff including payroll staff, administrative and executive Secretary to Director of Rural Medicine, information systems staff (except Help Desk), librarian and positions included in any other bargaining unit" (115 employees in unit)

Number of names of persons on revised voters' list	126
Number of persons who cast ballots	89
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	87
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	32
Number of ballots marked in favour of Intervenor	55
Number of ballots segregated and not counted	2

Applications for Certification Withdrawn

2813-06-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 2112894 Ontario Inc. carrying on business as Platinum Electric Platinum Electrical Contractors Inc. (Respondent)

3110-06-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786 (Applicant) v. Lopes Mechanical Ltd. (Respondent) v. Sheet Metal Workers' International Association, Local 504 (Intervenor)

3425-06-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Applicant) v. 3199786 Canada Inc. o/a Acoustique S. Mayer (Respondent) v. International Union of Painters and Allied Trades, Local 1891 (Intervenor)

3616-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. Leon's Insulation, a division of Superior Plus Inc. (Respondent)

3716-06-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. The Cadillac Fairview Corporation Limited (Respondent)

3926-06-R: Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Applicant) v. Task Specific Rehabilitation Inc. (Respondent)

4164-06-R: U.F.C.W. Local 333 (Applicant) v. Capital Security and Investigations (Respondent)

0136-07-R: Canadian Union of Public Employees (Applicant) v. City of Thunder Bay (Recreation and Culture Employees) (Respondent)

0141-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Hyprescon International Inc. and/or Hyprescon Inc. (Respondent) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7526 (Intervenor)

0161-07-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Canstar Security Services Inc. (Respondent)

0180-07-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Visions General Maintenance & Construction Services Inc. (Respondent)

0257-07-R: International Union of Operating Engineers Local 772 (Applicant) v. YMCA/YWCA Ottawa National Capital Region (Respondent)

0262-07-R: Canadian Construction Workers' Union (Applicant) v. Powerline Plus Ltd. (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervenor)

0290-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Queensgate Homes Inc. (Respondent)

FIRST AGREEMENT - DIRECTION

3972-06-FC: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Trax Personnel Services Inc. (Respondent) *(Terminated)*

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

2941-04-R: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. 1350929 Ontario Ltd., APM Construction Ontario and, A.P.M. Construction (Atlantic) Inc. (Respondents) *(Granted)*

2472-05-R: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. 816702 Ontario Inc. c.o.b. as Eagle Electric, Lakeside Electric Inc. and, 509566 Ontario Inc. (Respondents) *(Granted)*

0687-06-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Peelco Construction Services Limited, John Matas c.o.b. Matas Homes, Donmar Contraplan Inc., Matas Management Services Inc. (Respondents) (*Endorsed Settlement*)

2273-06-R: United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Bob's Drywall Ltd. and, Cheverie Holdings Inc. (Respondents) (*Withdrawn*)

2918-06-R: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 173 (Applicant) v. Festival Cinemas and/or, Festival Cinemas Inc. and/or, Theatre D Digital Corporation (Respondents) (*Withdrawn*)

3240-06-R; 3241-06-R: Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ontario Hydro, Hydro One Inc., Hydro One Networks Inc., Hydro One Network Services Inc., Hydro One Remote Communities, Ontario Hydro Energy Inc., Hydro One Delivery Services Inc., Hydro One Telecom Inc. (Respondents) (*Granted*)

3736-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Maple leaf Consumer Foods Inc. and, Maple Leaf Fresh Foods (Respondents) (*Withdrawn*)

4050-06-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 491262 Ontario Ltd. c.o.b. AB Construction Ltd., and/or 2032887 Ontario Inc. (Respondents) (*Withdrawn*)

SALE OF A BUSINESS

2941-04-R: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. 1350929 Ontario Ltd., APM Construction Ontario and, A.P.M. Construction (Atlantic) Inc. (Respondents) (*Granted*)

2472-05-R: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. 816702 Ontario Inc. c.o.b. as Eagle Electric, Lakeside Electric Inc. and, 509566 Ontario Inc. (Respondents) (*Granted*)

3228-05-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (Caw-Canada) (Applicant) v. Bingo Press & Specialty Limited operating as Bazaar Novelty (Bingo Press) and, Arrow Games Corporation (Arrow Games) (Respondents) (*Dismissed*)

0687-06-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Peelco Construction Services Limited, John Matas c.o.b. Matas Homes, Donmar Contraplan Inc., Matas Management Services Inc. (Respondents) (*Endorsed Settlement*)

2273-06-R: United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Bob's Drywall Ltd. and, Cheverie Holdings Inc. (Respondents) (*Withdrawn*)

2918-06-R: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 173 (Applicant) v. Festival Cinemas and/or, Festival Cinemas Inc. and/or, Theatre D Digital Corporation (Respondents) (*Withdrawn*)

3240-06-R; 3241-06-R: Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ontario Hydro, Hydro One Inc., Hydro One Networks Inc., Hydro One Network Services Inc., Hydro One Remote Communities, Ontario Hydro Energy Inc., Hydro One Delivery Services Inc., Hydro One Telecom Inc. (Respondents) (*Granted*)

3736-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Maple leaf Consumer Foods Inc. and, Maple Leaf Fresh Foods (Respondents) (*Withdrawn*)

4050-06-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 491262 Ontario Ltd. c.o.b. AB Construction Ltd., and/or 2032887 Ontario Inc. (Respondents) (*Withdrawn*)

0031-07-R: United Food Commercial Workers International Union, Local 175 (Applicant) v. 1359307 Ontario Inc. c.o.b. Brimley Price Chopper, and, 2115452 Ontario Inc. operating as Brimley Price Chopper (Respondents) (*Granted*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

1334-05-R: Enzo Mazzotta and Daniel Calabrese (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Respondent) v. Delta-Rae Homes, a Division of 1138319 Ontario Inc. (Intervenor) (*Dismissed*)

Unit: "all construction labourers in the employ of Delta-Rae Homes, a Division of 1138319 Ontario Inc., in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

3504-06-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers (Respondent) v. R.M. Belanger Ltd. (Intervenor) (*Terminated*) (*Having regard to the agreement of the parties.*)

3664-06-R: Ace Wrecking Employees (H. Carp Limited) (Applicant) v. Labourers International Union of North America, Local 1059 (Respondent) (*Granted*)

Unit: "Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, Local 1059" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	2
Number of ballots segregated and not counted	0

3826-06-R: Bhupinder Singh Sohi (Applicant) v. United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Respondent) v. 1272259 Ontario Ltd. o/a Best Western Travel Inn (Intervenor) (*Granted*)

Unit: "all employees of 1272259 Ontario Limited operating as Best Western Travel Inn in the City of Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, front desk and students employed during the school vacation period" (7 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

3942-06-R: Employees of Trax Personnel Services Inc. Cambridge (Applicant) v. United Steel Workers (Respondent) (*Dismissed*)

Unit: "all employees of Trax Personnel Services Inc. in the City of Cambridge, save and except supervisors and those above the rank of supervisor" (29 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1

4058-06-R: Ben Vince (Applicant) v. Teamsters Local Union No #880 (Respondent) v. TF Warehousing Inc. (Intervenor) (*Dismissed*)

Unit: "all employees of the TF Warehousing Inc. at Chatham, save and except foremen, persons above the rank of foremen, office and sales staff" (6 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	3
Number of ballots segregated and not counted	0

4180-06-R: Brenda Ucer on behalf of Extencicare Starwood Employees (Applicant) v. Canadian Auto Workers Union Local 830 (Respondent) v. Extencicare (Canada) Inc. (Intervenor) (*Dismissed*)

Unit: "all employees of Starwood, Ottawa, save and except registered nurses, physiotherapists, occupational therapists, supervisors, foremen, persons above the rank of supervisor or foreman, office staff, persons regularly employed for not more than forty-five (45) hours bi-weekly, and students employed during the school vacation period all employees of Starwood, Ottawa, regularly employed for not more than forty-five (45) hours bi-weekly, and students employed during the school vacation period, save and except registered nurses, physiotherapists,

occupational therapists, supervisors, foremen, person above the rank of supervisor or foremen, office staff and persons covered by subsisting collective agreements" (125 employees in unit)

Number of names of persons on revised voters' list	169
Number of persons who cast ballots	115
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	99
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	13
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	59
Number of ballots marked against respondent	48
Number of ballots segregated and not counted	8

0105-07-R: Springdale Country Manor Employees (Applicant) v. Service Employees International Union Local 1.ON (Respondent) v. Springdale Country Manor (Intervenor) (*Dismissed*) (*Having regard to the agreement of the parties.*)

0233-07-R: John Freer (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 866-0 (Respondent) v. Veolia ES Canada Industrial Services Inc. (formerly known as Onyx Industrial Service Ltd.) (Intervenor) (*Dismissed*)

0274-07-R: Restoration Contractors Association "Atlantis Restoration Service Ltd." (Applicant) v. Labourers' International Union of North America, Local 183 (Respondent) (*Dismissed*)

REFERRAL FROM MINISTER

0181-06-M: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) and its Local 462 (Applicant) v. Bingo Press & Specialty Limited / Arrow Games (Bazaar & Novelty) (Respondent) (*Dismissed*)

APPLICATION UNDER THE AMBULANCE SERVICES COLLECTIVE BARGAINING ACT

3961-06-M; 0028-07-M: Sun Parlour Emergency Services Incorporated (Essex Division) (Applicant) v. Service Employees' International Union, Local 1.on (Respondent) (*Granted*); Service Employees International Union Local 1.on (Applicant) v. Sun Parlour Emergency Services Incorporated (Essex Division) (Respondent) (*Dismissed*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2882-03-U; 3731-03-U: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Dan Benedict Co-Operative Homes (Respondent) (*Withdrawn*)

3280-04-U; 0296-05-U; 3583-05-U; 3584-05-U; 3620-05-U; 3621-05-U; 3622-05-U; 3623-05-U; 3781-05-U; 3782-05-U; 3783-05-U; 3784-05-U; 3785-05-U; 3786-05-U; 3787-05-U; 3788-05-U; 4003-05-U: Lyttleton Joseph, Keith Ramoutar, Joe Polito, Bruce Chesnick and Paul Cleveland, et al (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent) v. Toronto Community Housing Corporation (Intervenor); Walter Nicholson (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent) v. The Toronto Community Housing

Corporation (Intervenor); Barry Nicholson (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent) v. The Toronto Community Housing Corporation (Intervenor); DiFlaviano (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent) v. The Toronto Community Housing Corporation (Intervenor); Donald Scott Bower (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent) v. The Toronto Community Housing Corporation (Intervenor); Beverley Simpson (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent) v. The Toronto Community Housing Corporation (Intervenor); Brenda Ouimette (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent) v. The Toronto Community Housing Corporation (Intervenor); Keith Ramoutar (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent); Paul Cleveland (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent); Donald R. George (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent); Rohan McCalla (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent); Marco Savoie (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent); Roland Turner (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent); Jerry Lawless (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent); Manuel T. Casison (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent); Lytleton Joseph (Applicant) v. Canadian Union of Public Employees, Local 416 (Respondent) *(Dismissed)*

1375-05-U: Labourers' International Union of North America, Local 625 (Applicant) v. Leo Mailloux Construction Inc. and, Leo Mailloux (Respondents) *(Withdrawn)*

2341-05-U: Gerry Philippe (Applicant) v. Toronto Civic Employees' Union, Local 416, Canadian Union of Public Employees (Respondent) v. City of Toronto (Intervenor) *(Dismissed)*

2554-05-U: Sammy Bawab (Applicant) v. United Food and Commercial Workers Canada Local 1000A (Respondent) v. National Grocers Co. Limited (Intervenor) *(Dismissed)*

3384-05-U: UNITE HERE (Applicant) v. Sleep Country Canada Inc. (Respondent) *(Terminated)*

3679-05-U: Dr. Michael Cashion, Ms. Lynda Gameau (Applicant) v. Ontario Secondary School Teachers' Federation District #26 Office (Respondent) v. Upper Canada District School Board (Intervenor) *(Dismissed)*

0305-06-U: Maria Simoes (Applicant) v. UNITE HERE (Respondent) *(Dismissed)*

0798-06-U: Nino Conte (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 222 (Respondent) v. General Motors of Canada Limited (Intervenor) *(Dismissed)*

0847-06-U: International Union of Operating Engineers, Local 793 (Applicant) v. Sutherland & Sons Excavating Ltd. (Respondent) *(Granted)*

1292-06-U: The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. International Union of Painters and Allied Trades, Local 1891, R.P. Syntex Walls Systems and Contracting Inc. (Respondents) *(Dismissed)*

1345-06-U: Richard Gallant (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9403 (Respondent) *(Dismissed)*

1893-06-U: Ontario Public Service Employees Union (Applicant) v. Community Living Mississauga (Respondent) *(Withdrawn)*

2141-06-U: Lorna Sterling (Applicant) v. Ontario Nurses' Association (Respondent) v. William Osler HealthCentre (Intervenor) *(Withdrawn)*

2285-06-U: Ontario Pipe Trades Council (Applicant) v. Bissonnette Plumbing & Heating Co. Ltd. c.o.b. as Independent Energy Services (Respondent) (*Withdrawn*)

2295-06-U: Chiarina Palmisano (Applicant) v. United Food and Commercial Workers Canada, Local 1000A (Respondent) v. Loblaw's Companies Ltd. (Intervenor) (*Withdrawn*)

2439-06-U: Nancy DeLenardo (Applicant) v. UFCW Local 1977 (Bob Kearney) (Respondent) v. Zehrs Markets (Intervenor) (*Withdrawn*)

2570-06-U: Noella Latimer (Applicant) v. OPSEU (Respondent) v. Ministry of Community Safety and Correctional Services (Intervenor) (*Dismissed*)

2614-06-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 240 (Applicant) v. Beach Grove Golf and Country Club (Respondent) (*Withdrawn*)

2632-06-U: Dwayne Brown (Applicant) v. Milk and Bread Drivers, Daily Employees, Caters & Allied Employees Local Union 647, affiliated with the International Brotherhood of Teamsters (Respondent) v. Cara Operations Limited (Intervenor) (*Dismissed*)

2639-06-U: Labourers' International Union of North America, Local 493 (Applicant) v. B.E.S.T. Construction Inc. and Warren Gristley (Respondent) v. The United Brotherhood of Industrial, Construction, Maintenance and Service Workers of Ontario (UBICMSWO) (Intervenor) (*Withdrawn*)

2646-06-U: Nancy Elizabeth Ashley (Applicant) v. United Food and Commercial Workers, Local 175 (Respondent) v. Homewood Health Centre (Intervenor) (*Dismissed*)

2654-06-U: Teamsters Local Union No. 938 (Applicant) v. Value Village Stores Inc. (Respondent) (*Withdrawn*)

2678-06-U: Sheet Metal Workers' International Association Union Local 540 (Applicant) v. T.A. Morrison & Co. Inc. and Denis L.A. Labelle (Respondent) (*Withdrawn*)

2767-06-U: Wayne Daniel (Applicant) v. National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada) and its Local 973 (Respondent) v. Coca-Cola Bottling Company Ltd. (Intervenor) (*Dismissed*)

2933-06-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Liberte Natural Foods Inc. (Respondent) (*Withdrawn*)

3143-06-U: David P. Rae (Applicant) v. C.A.W. Local 1995 (Respondent) v. Alcoa Wheel Products Collingwood (Intervenor) (*Withdrawn*)

3255-06-U: Chris Mullins (Applicant) v. Teamsters Union Local 91 (Respondent) (*Dismissed*)

3483-06-U: Brian W. Sharp (Applicant) v. Teamsters Local Union 880 (Respondent) (*Withdrawn*)

3493-06-U: Health Care and Service Workers Union Local 304 affiliated with the Christian Labour Association of Canada (Applicant) v. Brock Mission (Respondent) (*Dismissed*)

3530-06-U: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Hanrahan Youth Services Inc. (Respondent) (*Withdrawn*)

3557-06-U: Stan Kusmierz and Zbigniew Samecki (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 636 (Respondent) v. Hyd-Mech Group Limited (Intervenor) (*Dismissed*)

3583-06-U: Frank Gualtieri (Applicant) v. Forge Workers Alliance Association (Respondent) (*Terminated*)

3600-06-U: International Union of Operating Engineers, Local 793 (Applicant) v. Leon's Insulation, a division of Superior Plus, Inc. (Respondent) (*Withdrawn*)

3601-06-U: Canadian Union of Public Employees (Applicant) v. Native Men's Residence (Na-Me-Res) (Respondent) (*Withdrawn*)

3618-06-U: UNITE HERE Local 75 (Applicant) v. Howard Johnson Inn & Suites Toronto East (Respondent) (*Withdrawn*)

3666-06-U: Antonio Alicandro (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. The Toronto Transit Commission (Intervenor) (*Withdrawn*)

3713-06-U: Parminder Bhati (Applicant) v. Teamsters Local 938 (Respondent) (*Dismissed*)

3810-06-U: Michael Andrew Quinney (Applicant) v. United Steelworkers of America, Local 8670 (Respondent) v. Crown Metal Packaging Canada LP (Intervenor) (*Withdrawn*)

3840-06-U: David Jas (Applicant) v. C.A.W. Local 195 Union Committee at G.W. Anglin (Respondent) (*Withdrawn*)

3881-06-U; 4188-06-U: United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Applicant) v. 1272259 Ontario Ltd. o/a Best Western Travel Inn (Respondent); 1272259 Ontario Ltd. o/a Best Western Travel Inn (Applicant) v. United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Respondent) (*Withdrawn*)

3927-06-U: Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Applicant) v. Task Specific Rehabilitation Inc. (Respondent) (*Withdrawn*)

3960-06-U; 0164-07-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Trax Personnel Services Inc. (Respondent) (*Terminated*)

4079-06-U: Labourers' International Union of North America, Local 1089 (Applicant) v. 1565671 Ontario Limited o/a Huron & Erie Excavating (Respondent) (*Granted*)

4127-06-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647 Affiliated with the International Brotherhood of Teamsters (Applicant) v. Roy Turk Industrial Sales Limited (Respondent) (*Withdrawn*)

4130-06-U: O.F.H.C.W. L.I.U.N.A. LOCAL 1110 (Applicant) v. The Wynfield (Respondent) (*Withdrawn*)

0081-07-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 199 (Applicant) v. David Chevrolet Ltd. (Respondent) (*Withdrawn*)

APPLICATION FOR INTERIM ORDER

2649-06-M: Teamsters Local Union No. 938 (Applicant) v. Value Village Stores Inc. (Respondent) *(Withdrawn)*

2795-06-M: The Ontario Nurses' Association (Applicant) v. Simcoe County CCAC, North Simcoe Muskoka CCAC, Southwest CCAC, and, Central CCAC (Respondents) v. The Crown in Right of Ontario as represented by the Minister of Health and Long-Term Care (Intervenor) *(Withdrawn)*

2934-06-M: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Liberte Natural Foods Inc. (Respondent) *(Withdrawn)*

4126-06-M: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647 Affiliated with the International Brotherhood of Teamsters (Applicant) v. Roy Turk Industrial Sales Limited (Respondent) *(Withdrawn)*

4138-06-M: Brick and Allied Craft Union of Canada, Kerry Wilson, Tom Williams, John Haggis, Joe Plunkett, Cameron MacKay and Frank Rocca (Applicant) v. Marble, Tile & Terrazzo, Local 31 Ontario of the Brick and Allied Craft Union of Canada, Joe Tersigni, Domenic DeCaria, Jocelyn Montheith, Nicola Vescio, Frank DeLio, Michael Ragazzon, Elvio Ragazzon, Nicola Boragina and Mario Leone (Respondent) v. International Union of Bricklayers and Allied Craft Workers and Craig Strudwick (Intervenor) *(Granted)*

0176-07-M: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Trax Personnel Services Inc. (Respondent) *(Terminated)*

APPLICATIONS FOR CONSENT TO PROSECUTE

3813-06-U: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Hanrahan Youth Services Inc. (Respondent) *(Withdrawn)*

JURISDICTIONAL DISPUTES

1053-04-JD: The Crown in right of Ontario as represented by the Ministry of Consumer and Business Services (Applicant) v. Ontario Public Service Employees Union (OPSEU) and, Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) (Respondents) *(Withdrawn)*

1161-06-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and its Local 786 (Applicant) v. Aecon Industrial and, International Brotherhood of Electrical Workers, Local 1687 (Respondents) *(Withdrawn)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

3052-06-M: Service Employees International Union, Local 1.0n (Applicant) v. Shelburne Residence Nursing Home (Respondent) *(Granted)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

1968-06-OH: Anastasialuz B. Adora (Applicant) v. Metro Inc. and/or Dominion Stores (Respondent) *(Withdrawn)*

2159-06-OH: Akobo Campbell (Applicant) v. Midas Auto Service (Respondent) (*Endorsed Settlement*)

2685-06-OH: Deon Myers (Applicant) v. 3 Man SisteK Data (Premiere Impressions) (Respondent) (*Granted*)

3142-06-OH: Jason James (Applicant) v. Newcastle Logistics Corporation (Respondent) (*Terminated*)

3287-06-OH: Nicole St. Onge (Applicant) v. Le Génésis Garden Inc. (Respondent) (*Terminated*)

3516-06-OH: Mark Davies (Applicant) v. Silver Cross Oakville Evenlode Management Inc. (Respondent) (*Withdrawn*)

3536-06-OH: Tina Les and James McCormick (Applicant) v. Bob Thomas, Superintendent Hamilton-Wentworth Detention Centre (Respondent) (*Withdrawn*)

3828-06-OH; 3829-06-OH; 3830-06-OH: Fredrick E. Chavis (Applicant) v. Hiram Walker & Sons Limited (Respondent) Fredrick E. Chavis (Applicant) v. Corby Distilleries Limited (Respondent) Fredrick E. Chavis (Applicant) v. C.A.W. Union Local 2027 (Respondent) (*Dismissed*)

3939-06-OH: Norman Wassing (Applicant) v. Commercial Cleaning Services (Respondent) (*Dismissed*)

4160-06-OH: John Vanbraeckel (Applicant) v. Myers Towing (Respondent) (*Withdrawn*)

CONSTRUCTION INDUSTRY GRIEVANCES

3415-04-G: International Union of Elevator Constructors and its Local 102 on behalf of Mr. Martin Ranta (Applicant) v. Otis Canada Incorporated (Respondent) (*Granted*)

1400-05-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Metric Tile Ltd., Metric Tile and Marble Inc. (Respondents) (*Endorsed Settlement*)

0686-06-G: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Peelco Construction Services Limited, John Matas c.o.b. Matas Homes, Donmar Contraplan Inc., Matas Management Services Inc. (Respondents) (*Endorsed Settlement*)

2274-06-G: United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Cheverie Holdings Inc. (Respondent) (*Withdrawn*)

2677-06-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 18 (Applicant) v. City of Hamilton (Respondent) (*Granted*)

3184-06-G: International Union of Operating Engineers, Local 793 (Applicant) v. 1565671 Ontario Ltd. c.o.b. Huron & Erie Excavating (Respondent) (*Granted*)

3517-06-G: Ontario Sheet Metal Workers' and Roofers Conference (Applicant) v. Crosby-Dewar Projects Limited (Respondent) (*Granted*)

3725-06-G: Quality Control Council of Canada (Applicant) v. Unique Detection Services Ltd. (Respondent) (*Withdrawn*)

3884-06-G: International Union of Operating Engineers, Local 793 (Applicant) v. Yukon Construction Inc. (Respondent) (*Granted*)

4009-06-G: Labourers' International Union of North America, Local 1059 (Applicant) v. R.M. Belanger Limited (Respondent) v. Greater Ontario Regional Council of Carpenters Drywall and Allied Workers, Local 2486 (Intervenor) *(Terminated) (Having regard to the agreement of the parties.)*

4021-06-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rinlor Construction Ltd. c.o.b. as Fischer Drywall & Acoustics and, Sergio Rea (Respondents) *(Endorsed Settlement)*

4052-06-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1105945 Ontario Limited c.o.b. as System Drywall and Acoustics (Respondent) *(Withdrawn)*

4053-06-G: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. 3197786 Canada Inc. o/a Acoustique S. Mayer (Respondent) *(Withdrawn)*

4054-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. 1430986 Ontario Inc. c.o.b. Roper Controls (Respondent) *(Endorsed Settlement)*

4070-06-G: Labourers' International Union of North America, Local 506 (Applicant) v. Teperman Demolition & Waste Inc. (Respondent) *(Endorsed Settlement)*

4073-06-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Whitmore Interiors Inc. (Respondent) *(Granted)*

4110-06-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Diamond Drywall Contracting Inc. (Respondent) *(Granted)*

4111-06-G: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. Wayne Speichts c.o.b. as Add-A-Coat Painting & Decorating (Respondent) *(Granted)*

4118-06-G: International Union of Operating Engineers, Local 793 (Applicant) v. C.H. Excavating (London) Ltd. (Respondent) *(Withdrawn)*

4173-06-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, UBC Local 494 (Applicant) v. Eastern Construction Company Limited (Respondent) *(Withdrawn)*

0001-07-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wade Gordon Cruise c.o.b. as Delta Contracting (Respondent) *(Granted)*

0002-07-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. P.G.S. Forming Inc. (Respondent) *(Granted)*

0019-07-G: Sheet Metal Workers' International Association, Local 235 (Applicant) v. Cladding Experts Inc. (Respondent) *(Withdrawn)*

0083-07-G: Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. P.G.S. Forming Inc. (Respondent) *(Granted)*

0095-07-G: ThyssenKrupp Elevator (Canada) Limited (Applicant) v. International Union of Elevator Constructors, Local 50 (Respondent) *(Dismissed)*

0117-07-G: Sheet Metal Workers' International Association, Local 397 (Applicant) v. Northern Engineering & Supply Co. Ltd. (Respondent) *(Granted)*

0147-07-G: The International Union of Painters and Allied Trades, Local Union 1824 (Applicant) v. Randy Wilmer c.o.b. as ARC The Painting Company (Respondent) (*Granted*)

0153-07-G: Labourers' International Union of North America, Local 493 (Applicant) v. Nor Eng Construction & Engineering Inc. (Respondent) (*Withdrawn*)

0155-07-G: Brick and Allied Craft Union of Canada (Applicant) v. Core Tec Contracting (Respondent) (*Withdrawn*)

0245-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Eagle Welding & Steel Erecting (Respondent) (*Granted*)

APPEALS - EMPLOYMENT STANDARDS ACT

2336-05-ES: Anthony R. Williamson, a Director of Ancon Industries Inc. (Applicant) v. Morgan Adams, John P. Archibald, Van Baird, Kevin Barry, Trevor Berry, Shannon Bates, Samantha Bowers, Nancy Bryant, Michael Burlacu, Deryl Cain, Michael Caldwell, Tom Campbell, Tracy Carter, Justin Casha, Wiktora Cielecka, Terri Clague, Sophia Clay, Susanne Cleroux, Carol Cooper, Glenda Cooze, Gabriel Curelea, Eric David, Anthony Dresler, Crystal Duggan, Thi Dung Duong, Thuy Phan Duong, Irene Dybala, Zbigniew Dziegiel, Daniel Felstead, Peggy Flack, Donna Fletcher, Richard Gibson, Darlene A. Gillis, Geraldine Goodyear, Doug Gower, Hien Ha, M. Elaine Hanlon, Dennis Hardcastle, Christopher Hay, Derek Holm, Michael Hooley, John Knippel, Shelley Lewis, John Love, Maria Marc, Lynn Marshall, Benjamin McBride, Bruce McDonald, Sherry Michie, Helen Minnie, Thuy Nguyen, Karen Nicholson, Peter Nowak, Heather Oerlemans, Jay Palmer, H. Partington, Janice E. Patterson, Janina Pawelek, Evelyn Payne, Maria Pitdrak, Brian Purdy, Vincent Rand, Dorota Rutkowski, Nina Ryszkowski, Alan D. Salter, Adam Scovell, Richard Sendall, Bill Shmuir, John Siscos, Rozalia Skrzypek, Elizabeth Skwarek, Janina Stefanski, Bob Stevenson, Peter Stevenson, Alina Szulc, Marlene Tayler, Anthony Van Heuvelen, Madan Vankamamidi, Tracey Walton, Dara White, Dawn White, Zofia Wielowska, Jason Willsher, Ed Wilson, and, Director of Employment Standards (Respondents) (*Granted*)

3754-05-ES: Tony Shearing (Applicant) v. James Way Construction Inc. and Director of Employment Standards (Respondents) (*Endorsed Settlement*)

0066-06-ES: Sebastian Kish (Applicant) v. Donald C. Simmons, o/a The Law Office of Donald C. Simmons and, Director of Employment Standards (Respondents) (*Withdrawn*)

0789-06-ES: Karen Buchanan (Applicant) v. Calian Ltd., Director of Employment Standards (Respondents) (*Withdrawn*)

0883-06-ES: Carol Betts (Applicant) v. Brookfield Lepage Johnson Controls Facility Management Services Ltd., SNC-Lavalin Profac Inc., Director of Employment Standards (Respondents) (*Dismissed*)

1602-06-ES: Khalil Haider Ashi operating as Ashi Petroleum (Applicant) v. Khalid Mohammed and Director of Employment Standards (Respondents) (*Granted*)

1739-06-ES: EnviroServe Inc. (Applicant) v. George Malek and Director of Employment Standards (Respondents) (*Granted*)

1841-06-ES: Jonathan Essa, a Director of Rejency Service Management Inc. (Applicant) v. Andrew Seko and, Director of Employment Standards (Respondents) (*Granted*)

1871-06-ES: Lloyd Sherwood Boughner a Director of 865538 Ontario Inc. o/a Westminster Trails Limited Partnership (Applicant) v. Darren Fawcett, Director of Employment Standards (Respondents) (*Dismissed*)

1935-06-ES: Carolyn Johnson (Applicant) v. City of Toronto and Director of Employment Standards (Respondents) *(Withdrawn)*

1961-06-ES: Hayhoe Equipment and Supply Ltd. o/a Cedar Springs Bottled Water (Applicant) v. Elaine Soligo and Director of Employment Standards (Respondents) *(Granted)*

2055-06-ES: Peter Parks (Applicant) v. Fabrene Inc. and Director of Employment Standards (Respondents) *(Withdrawn)*

2245-06-ES: Elite Personnel Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

2269-06-ES: Front Line Transportation Incorporated (Applicant) v. Francis McGeoghan and Director of Employment Standards (Respondents) *(Terminated) (Having regard to the agreement of the parties.)*

2294-06-ES: Ned Dancuo (Applicant) v. Envelopak Express Inc. and Director of Employment Standards (Respondents) *(Withdrawn)*

2801-06-ES: Martin Fortier (Applicant) v. John Buchanan & Sons Ltd. and Director of Employment Standards (Respondents) *(Withdrawn)*

2870-06-ES: Ontario Lottery and Gaming Corporation o/a Casino Sault Ste. Marie (Applicant) v. Donna Pierce and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2939-06-ES: 2030308 Ontario Inc. o/a Shoeless Joe's (Applicant) v. Rebecca Wherry, and Director of Employment Standards (Respondents) *(Terminated)*

2945-06-ES: Process Group Inc. (Applicant) v. Spencer J. Hawkes and Director of Employment Standards (Respondents) *(Dismissed)*

3035-06-ES: Haycore Canada Inc. (Applicant) v. Dale Boisvenue and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3130-06-ES: Jeremy Tibbo (Applicant) v. Seth Thomas Ferguson o/a Seth Ferguson Enterprises and Director of Employment Standards (Respondents) *(Withdrawn)*

3289-06-ES: Track-Corp Equipment Ltd. (Applicant) v. Denis Tremblay and Director of Employment Standards (Respondents) *(Granted)*

3380-06-ES: John S. Madore (Applicant) v. Waste Services (CA) Inc. and Director of Employment Standards (Respondents) *(Terminated)*

3492-06-ES; 3542-06-ES: Rubin Singh (Applicant) v. IFOP-Westwego Inc. and Director of Employment Standards (Respondents); Thonyon Namgyal (Applicant) v. IFOP-Westwego Inc. and Director of Employment Standards (Respondents) *(Withdrawn)*

3527-06-ES: Jefferson Metal Products Inc. (Applicant) v. Heath O'Neal, Director of Employment Standards (Respondents) *(Withdrawn)*

3533-06-ES; 3534-06-ES: Larry Bentley (Applicant) v. Holiday Retirement Corporation and Director of Employment Standards (Respondents); Carol Bentley (Applicant) v. Holiday Retirement Corporation and Director of Employment Standards (Respondents) *(Withdrawn)*

3570-06-ES: CS Square One Inc. o/a Crazy Sushi (Applicant) v. John M. Ang, Director of Employment Standards (Respondents) *(Terminated)*

3698-06-ES: Sheppard Publishing Inc. (Applicant) v. David Kazlovskis, Director of Employment Standards (Respondents) *(Terminated)*

3860-06-ES: Jackie Brillinger (Applicant) v. Rosaun Group Limited/McDonald's and Director of Employment Standards (Respondents) *(Dismissed)*

4092-06-ES: Ned Dancuo (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1509-05-HS; 1714-05-HS; 1716-05-HS; 2036-05-HS; 2038-05-HS; 2083-05-HS; 2294-05-HS: Home Depot of Canada Inc. (Applicant) v. Associates at the Home Depot of Canada Inc. and Suzette Earhart, Inspector (Respondents); Home Depot of Canada Inc. (Applicant) v. Associates at the Home Depot store and Peter Walker, Inspector (Respondents); Home Depot of Canada Inc. (Applicant) v. Associates at the Home Depot store and Ronald Jeakins, Inspector (Respondents); Home Depot of Canada Inc. (Applicant) v. Associates at the Home Depot store, Carroll Kelly, Inspector (Respondents) Home Depot of Canada Inc. (Applicant) v. Associates at the Home Depot store, Carol Graziosi, Inspector (Respondents) Home Depot of Canada Inc. (Applicant) v. Associates at the Home Depot store, Carroll Kelly, Inspector (Respondents); Home Depot of Canada Inc. (Applicant) v. Associates at the Home Depot store, Andrew Selluski, Inspector (Respondents) *(Withdrawn)*

4144-05-HS: AutoShow (Applicant) v. Neil Martin, Inspector (Respondent) *(Withdrawn)*

0479-06-HS: United Lumber & Building Supplies Co. Ltd (Applicant) v. Douglas West, Inspector (Respondent) *(Withdrawn)*

1023-06-HS: Bradley Bros. Limited (Applicant) v. Andres Johannesson, Inspector (Respondent) *(Terminated)*

3170-06-HS: Brian's Poultry Services Ltd. (Applicant) v. Joanne Lippert, Christopher Ahrens, Inspector (Respondents) *(Withdrawn)*

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

2794-06-PS: Ontario Nurses' Association (Applicant) v. Simcoe County CCAC, North Simcoe Muskoka CCAC, Southwest CCAC, and, Central CCAC (Respondents) *(Withdrawn)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2601-05-U: Lise Roy (Applicant) v. CUPE Local 8888 (Respondent) v. District School Board Ontario North East (Intervenor) *(Dismissed)*

0769-06-ES: Devendranauth Misir, a Director of Integrated Health Care Services o/a Bay-Wellesley Medical Services and Walk-In Clinic Inc. (Applicant) v. Mulunesh F. Agago, Joan A. Blagrove, Rosa Dalia Burbano, Ruth M. Carbajal, Doreen A. Emanuel, Libanos Getachew, Maria Delia Manzano-Gimenez, Helen Rezendes-Medeiros, Roslyn Singer, Donna Sutherland, Evelyn T. Tuazon, Amsale Worku, Edith Molna and Director of Employment Standards (Respondents) *(Dismissed)*

1900-06-ES: Naser Farsijani (Applicant) v. Vesco Elek Operating as Bodo, Director of Employment Standards (Respondents) *(Granted)*

2774-06-R: Teamsters Local Union No. 938, (Applicant) v. Value Village Stores Inc. (Respondent) (*Withdrawn*)

3047-06-U: Roselle Beausoleil (Applicant) v. Ontario Public Service Employees Union (OPSEU) (Respondent) v. Ministry of Community Safety and Correctional Services (Intervenor) (*Dismissed*)

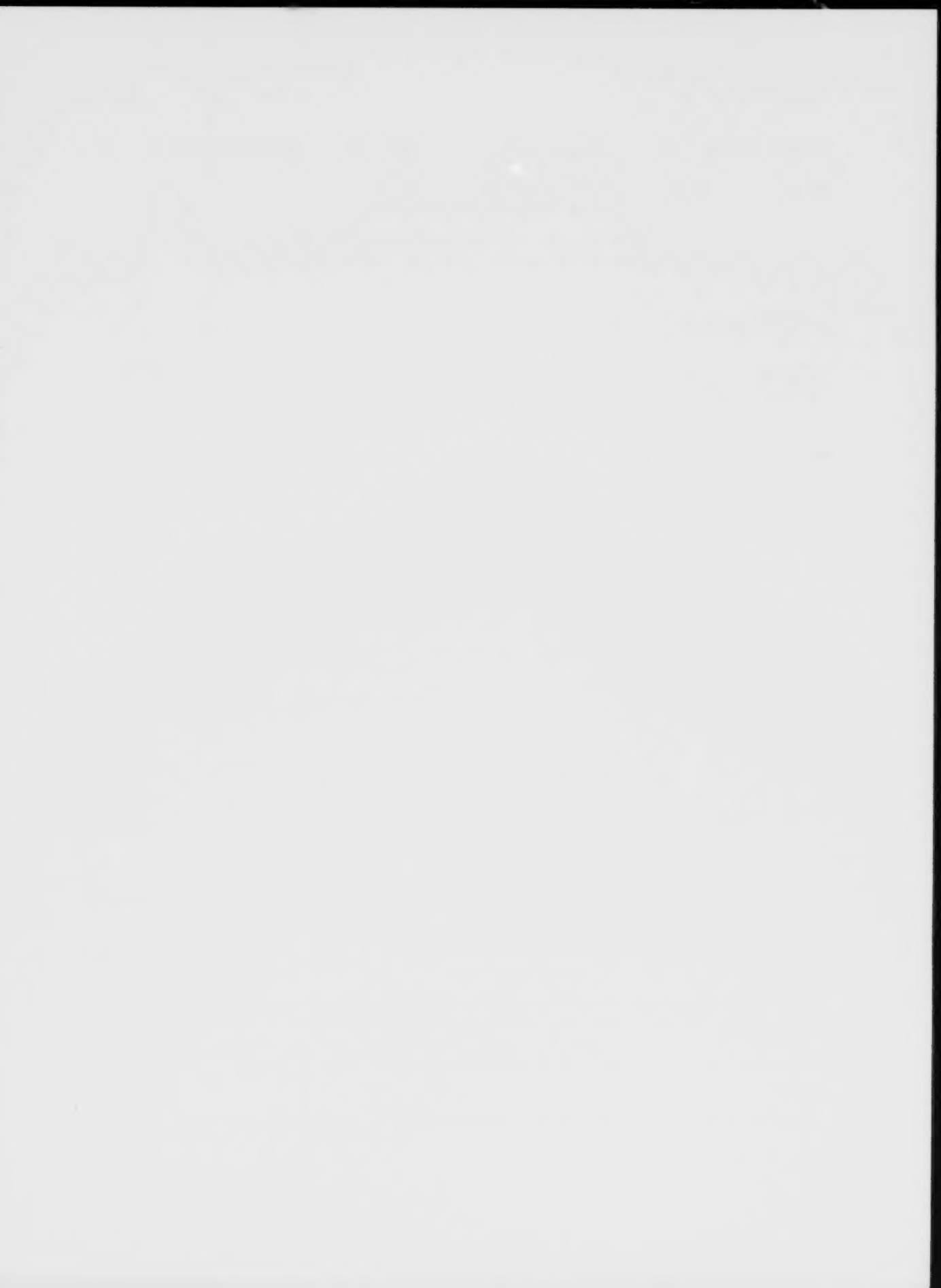
3796-06-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Rieter Automotive Canada, Carpet (Respondent) (*Dismissed*)

SECTOR DETERMINATION

3748-06-M: Central Ontario Regional Council of Carpenters, Drywall and Allied Workers and its Local 27 (Applicant) v. Ellis Don Construction (Respondent) (*Withdrawn*)

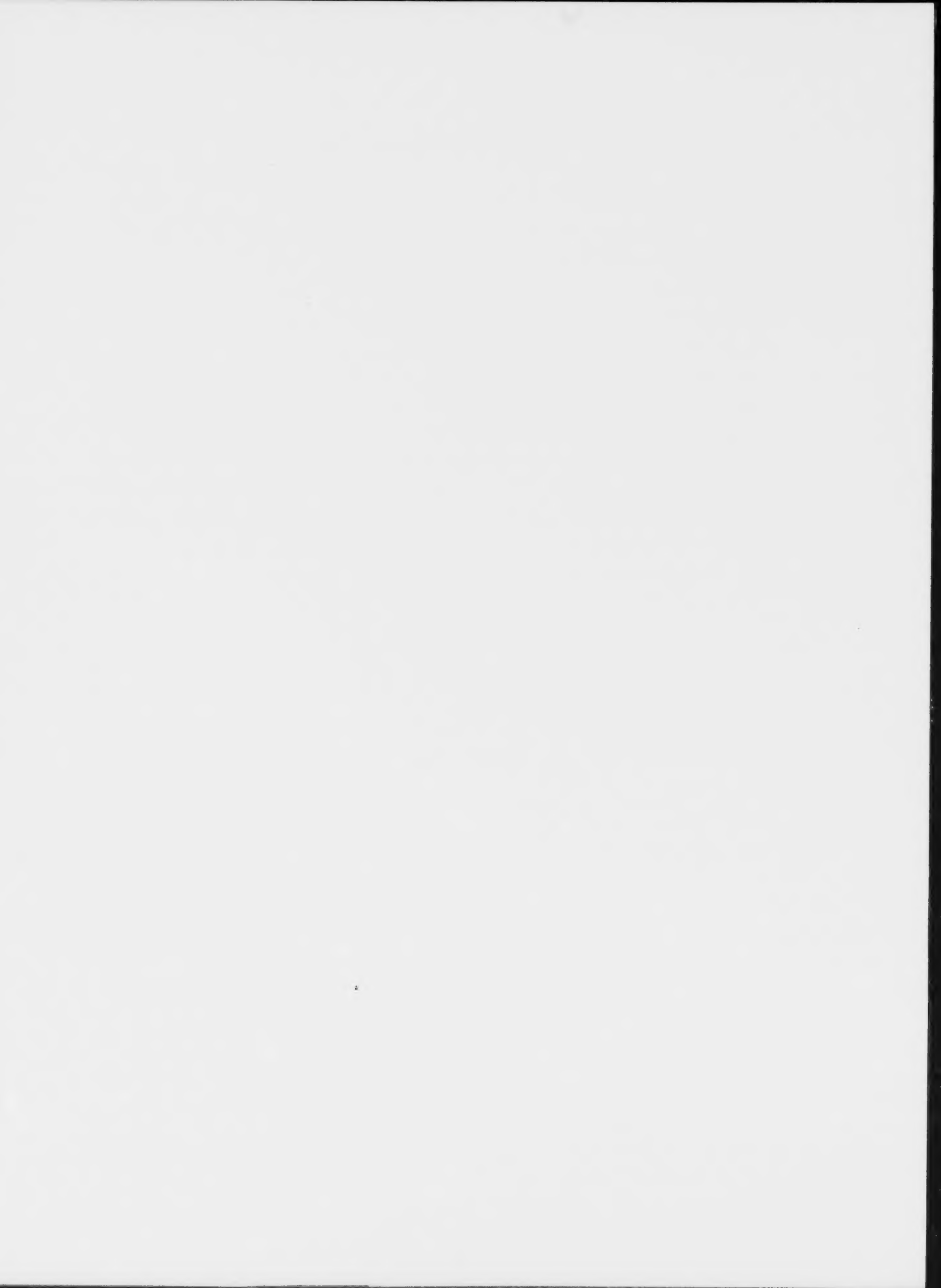
PAY EQUITY ACT

2837-06-PE: Pay Equity Office (Applicant) v. Precious People Place Child Care Centre Inc., Rosa Xavier, Natasha Rosemary Reid (Respondents) (*Granted*)



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MAY 2007

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1216-05-R: Labourers' International Union of North America, Local 625 (Applicant) v. Mastercraft Homes Windsor Inc. and Legacy Park Inc. (Respondent)

Unit: "all construction labourers in the employ of Mastercraft Homes Windsor Inc., Legacy Park Inc., Mario Mancini and 882885 Ontario Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Mastercraft Homes Windsor Inc., Legacy Park Inc., Mario Mancini and 882885 Ontario Inc. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (0 employees in unit)

2929-05-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. B.G. Schickedanz Homes Inc. (Respondent)

Unit: "all construction labourers in the employ of B.G. Schickedanz Homes Inc. in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

3731-05-R: United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local Union 46 (Applicant) v. RSG Mechanical Incorporated (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of RSG Mechanical Incorporated in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of RSG Mechanical Incorporated in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (19 employees in unit)

0179-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Pro-Tek Mechanical Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Pro-Tek Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Pro-Tek Mechanical Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

2226-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Omico Mechanical Limited (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Omico Mechanical Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Omico Mechanical Limited in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

3065-06-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1690148 Ontario Inc., and, Walls.Com.Inc. (Respondents)

Unit: "all painters and painters' apprentices in the employ of 1690148 Ontario Inc. and Walls.Com.Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all painters and painters' apprentices in the employ of 1690148 Ontario Inc. and Walls.Com.Inc. in all sectors of the construction industry in the County of Lambton and the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit) (Clarity Note)

3291-06-R: Canadian Construction Workers' Union (Applicant) v. Onit Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of Onit Construction Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3308-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Amlap Corporation Inc. (Respondent)

Unit: "all construction labourers in the employ of Amlap Corporation Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Amlap Corporation Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

3314-06-R: Canadian Construction Workers' Union (Applicant) v. Tsunami Construction Corporation (Respondent)

Unit: "all construction labourers in the employ of Tsunami Construction Corporation in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

3799-06-R: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Les Entreprises de Construction Progypse Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Les Entreprises de Construction Progypse Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Les Entreprises de Construction Progypse Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

4149-06-R: Brick and Allied Craft Union of Canada (Applicant) v. George & Asmusen Limited (Respondent) v. International Union of Bricklayers and Allied Craft Workers International Union of Bricklayers and Allied Craft Workers, Local 6 International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers, Local 20 (Intervenor)

Unit: "all bricklayers, stonemasons and plasters and their respective apprentices, improvers and working forepersons in the employ of George & Asmusen Limited in the industrial, commercial and institutional sector of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham." (26 employees in unit)

0011-07-R: Brick and Allied Craft Union of Canada (Applicant) v. FM BOT Contracting Ltd. (Respondent)

Unit: "all bricklayers, stonemasons and plasterers and their respective apprentices, improvers and working forepersons in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the County of Simcoe and the District Municipality of Muskoka" (10 employees in unit)

0012-07-R: Brick and Allied Craft Union of Canada (Applicant) v. Lorcan Construction Ltd. (Respondent) v. International Union of Bricklayers and Allied Craft Workers, International Union of Bricklayers and Allied Craft Workers, Local 6, International Union of Bricklayers and Allied Craft Workers, Local 7 and International Union of Bricklayers and Allied Craft Workers Local 20 (Intervenor)

Unit: "all bricklayers, stonemasons and plasterers and their respective apprentices, improvers and working forepersons in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham" (2 employees in unit)

0146-07-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. G.P./Garrrick Electric Ltd. (Respondent)

Unit: "all electricians, and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices and communication cable installers in the employ of G.P./Garrrick Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all electricians, and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices and communication cable installers in the employ of G.P./Garrrick Electric Ltd. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

0315-07-R: Christian Labour Association of Canada (Applicant) v. Taggart Realty Management Inc. (Respondent)

Unit: "all journeyman, apprentice carpenters and construction labourers in the employ of Taggart Realty Management Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

0453-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 3 D Stamped Concrete & Masonry (Respondent)

Unit: "all construction labourers in the employ of 3 D Stamped Concrete & Masonry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of 3 D Stamped Concrete & Masonry in all sectors of the construction industry in the County of Lambton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0454-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ganotech Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Ganotech Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Ganotech Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0455-07-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Ahkcon Limited (Respondent)

Unit: "all painters and painters' apprentices in the employ of Ahkcon Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all painters and painters' apprentices in the employ of Ahkcon Limited in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit) (Clarity Note)

0456-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bolton View Carpentry Ltd. (Respondent)

Unit: "all journeymen and apprentice carpenters and all construction labourers in the employ of Bolton View Carpentry Ltd. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

0494-07-R: International Union of Operating Engineers, Local 793 (Applicant) v. Norjohn Contracting and Paving Ltd. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Norjohn Contracting and Paving Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all employees engaged in the operation of cranes, shovels, bulldozers, and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of Norjohn Contracting and Paving Ltd. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

0553-07-R: Iron Workers District Council of Ontario (Applicant) v. JD Fabricating Limited (Respondent)

Unit: "all ironworkers and ironworkers' apprentices in the employ of JD Fabricating Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all ironworkers and ironworkers' apprentices in the employ of JD Fabricating Limited in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0600-07-R: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Active Wall Inc. (Respondent)

Unit: "all glaziers, glaziers' apprentices and metal mechanics in the employ of Active Wall Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all glaziers, glaziers' apprentices and metal mechanics in the employ of Active Wall Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0622-07-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Applicant) v. JMR Electric Ltd. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices and all construction labourers in the employ of JMR Electric Ltd. in all sectors of the construction industry in The Town of Mattawa and the Townships of Mattawa and Papeneau-Cameron, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

Bargaining Agents Certified Subsequent to Vote**3736-05-R: Labourers International Union of North America, Local 837 (Applicant) v. ReNu Recycling Inc. (Respondent)**

Unit: "all employees of ReNu Recycling Inc. in the City of Welland, save and except non-working foremen, and persons above the rank of non-working foreman" (15 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

1880-06-R: Public Service Alliance of Canada (Applicant) v. OLG Slots at Georgian Downs (Respondent) v. Georgian Downs (Intervenor)

Unit: "all Security Officers of the OLG Slots at Georgian Downs in the Town of Innisfil, Ontario, save and except supervisors, persons above the rank of supervisor, surveillance staff, office and clerical staff and students employed during the school vacation period" (40 employees in unit)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	0

3392-06-R: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Chislett Asphalt Roofing Ltd. (Respondent) v. Universal Workers Union, L.I.U.N.A. Local 183 (Intervenor)

Unit: "all roofers, metalmen and their helpers, including dependent pieceworkers as described in the clarity note and hourly paid employees in the employ of Chislett Asphalt Roofing Ltd. engaged in all phases of roofing, including the application of shingles, louvers, roof vents, eave protection, step flashing, metal or asphalt valleys, ice and water shield and corner pans in all sectors of the construction industry, excluding the industrial, commercial and institutional sector in and out of the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; the Towns of Cobourg and Port Hope, and the geographic Townships of Hope, Hamilton, and Altwick in the County of Northumberland; the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton; the County of Simcoe and the District Municipality of Muskoka, save and except non-working foremen, persons above the rank of non-working foreman, persons engaged in re-roofing, hourly servicemen, flat roofers, aluminum/vinyl applicators, office, warehouse/shop and clerical employees" (25 employees in unit)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	8
Number of ballots marked in favour of Intervenor	2
Number of ballots segregated and not counted	2

3604-06-R: Canadian Office and Professional Employees Union Local 343 (Applicant) v. Metal Supermarkets (Canada) Ltd. (Respondent)

Unit: "all employees employed by Metal Supermarkets (Canada) Ltd. in the City of Toronto, save and except the Regional Manager (Branch Managers), and those persons above the rank of Regional Manager (Branch Managers, salespersons, any non-branch based employees and students employed during the school vacation period)" (9 employees in unit)

Number of names of persons on revised voters' list 12
 Number of persons who cast ballots 12
 Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list 9
 Number of segregated ballots cast by persons whose names appear on voter's list 3
 Number of segregated ballots cast by persons whose names do not appear on voters' list 0
 Number of spoiled ballots 0
 Number of ballots marked in favour of applicant 9
 Number of ballots marked against applicant 0
 Number of ballots segregated and not counted 3

3643-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Bruce Power LP (Respondent) v. Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 (Intervenor)

Unit: "all cement masons and cement masons' apprentices, plasterers and plasterers' apprentices, masonry restoration journeymen and apprentices and improvers and foremen below the rank of General Foreman engaged in all construction industry work performed in the Province of Ontario on Ontario Power Generation Inc., Hydro One Inc. and Bruce Power LP property for the bulk power system, save and except the building of commercial - type office facilities at urban locations remote from operating facilities" (2 employees in unit) (*Clarity Note*) (Having regard to the agreement of the parties.)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of Intervenor	0
Number of ballots segregated and not counted	0

4114-06-R: Teamsters Local Union No. 938 (Applicant) v. I.T.S. Canada Inc. (Respondent)

Unit: "all employees of I.T.S. Canada Inc. working at 1150 Stevenson Road South, Oshawa, Ontario, save and except site supervisors and persons above the rank of site supervisor" (14 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

4134-06-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the Municipality of Magnetawan (Respondent)

Unit: "all employees employed by The Corporation of the Municipality of Magnetawan in the District of Parry Sound save and except supervisors and persons above the rank of supervisor and students employed during the school vacation period" (12 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	6

0024-07-R: Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Trades Incorporated (Respondent)

Unit: "all employees of Trades Incorporated employed in the County of Essex (including the City of Windsor, Ontario), save and except supervisor, persons above the rank of supervisor, employees represented by other trade unions and office and clerical staff" (23 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	1

0030-07-R: Teamsters Local Union No. 419 (Applicant) v. Riscon Services Ltd. (Respondent)

Unit: "all employees of Riscon Services Ltd. based in the Province of Ontario and working in the armoured car industry save and except supervisors, and those persons above the rank of supervisor, office, clerical employees, and sales staff" (11 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9

Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

0032-07-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Bravo Cement Contracting (London) Inc. (Respondent) v. Operative Plasterers' Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 (Intervenor)

Unit: "all employees engaged in cement finishing and waterproofing in the employ of Bravo Cement Contracting (London) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non working foreman and save and except persons covered under the subsisting Provincial ICI Collective Agreement between the responding party and the applicant" (7 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	7

0071-07-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Bridgewood Plumbing Limited (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervenor)

Unit: "all plumbers and plumbers' apprentices in the employ of Bridgewood Plumbing Limited in all sectors of the construction industry in the Province of Ontario, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0073-07-R: Southwestern Ontario Health Care and Service Workers, Local 303, affiliated with Christian Labour Association of Canada (Applicant) v. Devonshire Erin Mills Inc. c.o.b. as Longworth Long-Term Care (Respondent)

Unit: "all graduate and registered practical nurses employed by Devonshire Erin Mills Inc. carrying on business as Longworth Long-Term Care, in the City of London, save and except supervisors and persons above the rank of supervisor" (20 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on	1

voters' list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0087-07-R: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 828 (Applicant) v. The Stratford Shakespearean Festival of Canada (Respondent)

Unit: "all employees of The Stratford Shakespearean Festival of Canada in the City of Stratford engaged in the painting of theatrical scenery, save and except technical director and people above the rank" (8 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0088-07-R: Service Employees International Union, Local 1 on (Applicant) v. Norwood Nursing Home Ltd. (Respondent)

Unit: "all employees of Norwood Nursing Home Ltd. in the City of Toronto, save and except supervisors, persons above the rank of supervisor, registered nurses, directors and office and clerical staff" (45 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	39
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

0097-07-R: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dominion Sheet Metal and Roofing Works (Respondent) v. Universal Workers Union, L.I.U.N.A., Local 183, Sheet Metal Workers' International Association, Local 51 (Intervenors)

Unit: "all roofers, metalmen and their helpers, including dependent pieceworkers as described in the clarity note and hourly paid employees in the employ of Dominion Sheet Metal and Roofing Works engaged in all phases of roofing, including the application of shingles, louvers, roof vents, eave protection, step flashing, metal or asphalt valleys, ice and water shield and corner pans in all sectors of the construction industry, excluding the industrial, commercial and

institutional sector in and out of the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; the Towns of Cobourg and Port Hope, and the geographic Townships of Hope, Hamilton, and Alnwick in the County of Northumberland; the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton; the County of Simcoe and the District Municipality of Muskoka, save and except non-working foremen, persons above the rank of non-working foreman, persons engaged in re-roofing, hourly servicemen, flat roofers, aluminum/vinyl applicators, office, warehouse/shop and clerical employees" (54 employees in unit) (*Clarity Note*) (Having regard to the agreement of the parties.)

Number of names of persons on revised voters' list	71
Number of persons who cast ballots	79
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names do not appear on voters' list	39
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	47
Number of ballots marked in favour of Intervenor	1
Number of ballots segregated and not counted	20

0118-07-R: The Society of Energy Professionals, IFPTE Local 160 (Applicant) v. Ontario Energy Board (Respondent)

Unit: "all employees of the Ontario Energy Board in the City of Toronto, save and except managers, persons above the rank of manager, persons employed in a confidential capacity in matters relating to labour relations and members of the legal profession entitled to practice in Ontario and employed in a professional capacity" (122 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	123
Number of persons who cast ballots	128
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of segregated ballots cast by persons whose names appear on voter's list	63
Number of segregated ballots cast by persons whose names do not appear on voters' list	8
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	65
Number of ballots marked against applicant	52
Number of ballots segregated and not counted	11

0150-07-R: Ontario Nurses' Association (Applicant) v. Great Northern Nursing Centre (Respondent)

Unit: "all Registered and Graduate Nurses at Great Northern Nursing Centre, save and except supervisors, persons above the rank of supervisor and employees in classifications covered by subsisting collective agreements" (8 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names	6

appear on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0152-07-R: Service Employees International Union Local 1.0n (Applicant) v. Rideau Gardens Inc. (Respondent)

Unit: "all employees of Rideau Gardens Inc., in the City of Ottawa, save and except Managers, persons above the rank of Manager, Registered Nurses, Administrative Assistant and Activity Co-ordinator" (82 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	78
Number of persons who cast ballots	72
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	62
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	64
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	6

0154-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 1331493 Ontario Limited o/a Elm Management (Respondent) v. Service Employees International Union, Local 1.0n (Intervenor)

Unit: "all employees of 1331493 Ontario Limited o/a Elm Management, engaged in dietary work, employed at Extendicare Inc. Long Term Care Centre, 360 Croft Street, Port Hope, Ontario, save and except supervisors, persons above the rank of supervisor and office and clerical staff" (15 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	2

0162-07-R: Teamsters Local Union 91 (Applicant) v. County Bus Service Limited (Respondent)

Unit: "all bus drivers employed by County Bus Service Limited working in and out of 507B Ashley Street, Foxboro, Ontario, K0K 2B0, save and except supervisors, persons above the rank of supervisor, full-time dispatchers, mechanics, owners, sales and full-time office/clerical staff" (20 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

0174-07-R: Teamsters Local Union No. 91 (Applicant) v. Loyalist Bus Lines Ltd. (Respondent)

Unit: "all bus drivers employed by Loyalist Bus Lines Ltd. working in and out of 507B Ashley Street, Foxboro, Ontario, K0K 2B0, save and except supervisors, persons above the rank of supervisor, full-time dispatchers, mechanics, owners, sales and full-time office/clerical staff" (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0181-07-R: Service Employees International Union Local 2.0n Brewery, General and Professional Workers Union (Applicant) v. Bee-Clean (Toronto) Ltd. (Respondent)

Unit: "all employees of Bee-Clean (Toronto) Ltd. working at 1 Front St. W., in the City of Toronto, save and except office and clerical employees, supervisors and persons above the rank of supervisor" (12 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

0189-07-R: Ontario Nurses' Association (Applicant) v. Extendicare Tecumseh (Respondent)

Unit: "all the registered nurses and nurses with Temporary Certificate of Registration engaged in a nursing capacity by Extendicare Tecumseh at 2475 St. Alphonse Street, Tecumseh, Ontario, save and except Assistant Director of

Care and persons above the rank of Assistant Director of Care" (9 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0236-07-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. OZZ Comfort Solutions Inc. (Respondent)

Unit: "all service technicians employed by OZZ Comfort Solutions Inc., working in and out of Concord, save and except service managers and persons above the rank of service manager, office, sales and clerical staff" (10 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0237-07-R: Service Employees International Union Local 1.0n (Applicant) v. Cambridge Retirement Homes Inc. c.o.b. as Queen's Square Terrace (Respondent)

Unit: "all employees of Cambridge Retirement Homes Inc. c.o.b. as Queen's Square Terrace located at 10 Melville Street (N), Cambridge, Ontario, save and except supervisors and persons above the rank of supervisor" (35 employees in unit)

Number of names of persons on revised voters' list	36
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	2

0288-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters

and Joiners of America (Applicant) v. 1085511 Ontario Inc. o/a D.Pettit Home Improvements (Respondent) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Intervenor)

Unit: "all construction employees, including dependant pieceworkers and their helpers, and hourly paid employees in the employ of 1085511 Ontario Inc. o/a Pettit Home Improvements engaged in the installation of all types of exterior cladding (including aluminum and vinyl siding) eavestroughing, soffit and fascia, in all sectors of the construction industry, excluding the industrial, commercial and institutional sector in and out of O.L.R.B. Areas No. 8, 9, 10, 11, 18, [namely the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; and the Towns of Cobourg and Port Hope, and the geographic Townships of Hope, Hamilton, and Alnwick in the County of Northumberland; the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton; and the County of Simcoe; and the District Municipality of Muskoka] and that portion of 12 West of the Trent-Severn Water Way, save and except non-working foremen, persons above the rank of non-working foreman, office, warehouse, shop and clerical employees" (9 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked in favour of Intervenor	0

0301-07-R: Service Employees International Union Local 1.on (Applicant) v. CSH Van Home Manor Inc. (Respondent)

Unit: "all employees of CSH Van Home Manor Inc. at 25 Van Home Avenue, Smiths Falls, Ontario, save and except supervisors and persons above the rank of supervisor, registered nurses and office and clerical staff" (25 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	0

0304-07-R: Service Employees International Union, Local 1.on (Applicant) v. Lemonwood Retirement Residence Limited Partnership c.o.b. Chartwell Select Scarlett Heights (Respondent)

Unit: "all employees of Lemonwood Retirement Residence Limited Partnership c.o.b. Chartwell Select Scarlett Heights employed at 4005 Eglinton Avenue West, Etobicoke, Ontario, save and except supervisors and persons above the rank of supervisor" (19 employees in unit)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	1

0317-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Titan Exteriors Inc. a.k.a. Crosstown Siding Contractors (Respondent) v. Universal Workers Union, L.L.U.N.A. Local 183 (Intervenor)

Unit: "all construction employees, including dependant pieceworkers and their helpers, and hourly paid employees in the employ of Titan Exteriors Inc. a.k.a. Crosstown Siding Contractors engaged in the installation of all types of exterior cladding (including aluminum and vinyl siding) eavestroughing, soffit and fascia, in all sectors of the construction industry, excluding the industrial, commercial and institutional sector in and out of O.L.R.B. Areas No. 8, 9, 10, 11, 18, [namely the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; and the Towns of Cobourg and Port Hope, and the geographic Townships of Hope, Hamilton, and Alnwick in the County of Northumberland; the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton; and the County of Simcoe; and the District Municipality of Muskoka] and that portion of 12 West of the Trent-Severn Water Way, save and except non working foremen, persons above the rank of non-working foreman, office, warehouse, shop and clerical employees" (7 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of Intervenor	0
Number of ballots segregated and not counted	0

0334-07-R: Canadian Union of Public Employees (Applicant) v. McMurrich Sprouts Daycare (Respondent)

Unit: "all employees of the McMurrich Sprouts Daycare in the City of Toronto, save and except the Bookkeeper, Assistant Director and persons above the rank of Assistant Director" (20 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	22
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Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

0359-07-R: Teamsters Local Union 91 (Applicant) v. Boldrick Bus Service Limited (Respondent)

Unit: "all bus drivers employed by Boldrick Bus Service Limited working in and out of the Trenton yard at 1029 County Road 40, Trenton, Ontario and Tweed yard at 341 Victoria St. North, Tweed, Ontario for the Tri Board Authority, save and except supervisors, persons above the rank of supervisor, coordinators, dispatchers, mechanics, owners, monitors, and full time office/clerical staff" (40 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	46
Number of persons who cast ballots	51
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	8
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	10

0495-07-R: Canadian Union of Public Employees Local 1281 (CUPE Local 1281) (Applicant) v. Federation of Metro Toronto Tenants Association (FMTA) (Respondent)

Unit: "all employees of the Federation of Metro Toronto Tenants Associations (FMTA) in the City of Toronto, save and except managers and persons above the rank of manager" (7 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	7
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0546-07-R: Ontario Public Service Employees Union (Applicant) v. Elizabeth Fry Society of Toronto (Respondent)

Unit: "all employees of the Elizabeth Fry Society of Toronto in the City of Toronto, save and except the Executive Director and persons above the rank of Executive Director." (30 employees in unit) (*Having regard to the agreement of the parties.*)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

Applications for Certification Dismissed Without Vote

3886-06-R: Labourers' International Union of North America, Local 625 (Applicant) v. Gagnon Demolition Inc. (Respondent)

4048-06-R: Construction Workers Local 6 affiliated with the Christian Labour Association of Canada (Applicant) v. 1141002 Ontario Limited o/a Advantage Electric (Respondent) v. International Brotherhood of Electrical Workers, Local 105 (Intervenor)

0668-07-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Detail Plumbing Corp. (Respondent) v. Universal Workers Union, L.I.U.N.A. Local 183 (Intervenor)

Applications for Certification Dismissed Subsequent to Vote

3269-00-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. L.G.R. Tiles Ltd. (Respondent) v. Nestor Occhipinti, Giuseppe Pecchia, Giuseppe SanFelice, Davide Mazzotta, Mario Giannantonio, Mike Fitzpatrick (Intervenors)

Unit #1: "all marble, tile and terrazzo, cement masons and their respective helpers, apprentices, improvers and all construction labourers in the employ of L.G.R. Tiles Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

4287-04-R: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Regal Aluminum Systems Inc. (Respondent)

Unit: "all glaziers and glaziers' apprentices in the employ of Regal Aluminum (1993) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all glaziers and glaziers' apprentices in the employ of Regal Aluminum (1993) Inc. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

2856-06-R: Hospitality & Service Trades Union, Local 261 (Applicant) v. 1663221 Ontario Limited c.o.b. as Centurion Conference & Event Center (Respondent)

Unit #1: "all employees of the employer at its location at 170 Clonnade Road South in the City of Ottawa, save and except Supervisors, persons above the rank of supervisor, office and clerical staff" (35 employees in unit)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	42
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	8

3838-06-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Barton Retirement Inc. c.o.b. as Wellington Nursing Home (Respondent)

Unit: "all employees working as Unit Clerks for the Wellington Nursing Home, in the City of Hamilton save and except supervisors, and persons above the rank of supervisor, registered, graduate and undergraduate nurses, professional medical staff, paramedical employees and office and clerical staff, students employed during the school vacation period, and employees covered under the collective bargaining agreement between the Respondent and Applicant Union" (2 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names	0

appear on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

4038-06-R: Canadian Construction Workers' Union (Applicant) v. Chestnut Hill Homes and/or Greyrock Developments Limited and/or Greyrock Group of Companies and/or Javid Construction Management Limited and/or Destiny Building Corporation (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervenor)

Unit: "all construction employees engaged in the on-site construction of all types of low-rise housing and their natural amenities up to the date of closing or date of occupancy, whichever occurs first, of said housing or part thereof while working in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except employees engaged as non-working foremen, watchmen and engineering staff" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked in favour of Intervenor	1
Number of ballots segregated and not counted	0

0038-07-R: U.F.C.W. Local 333 (Applicant) v. Total Security Management Services Inc. (Respondent)

Unit: "all employees of Total Security Management Services Inc. located at 250 Ferrand Drive, Toronto, Ontario, M3C 3G8, save and except supervisors and persons above the rank of supervisor." (7 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	2

0074-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Newark Paperboard Products Ltd. (Respondent)

Unit: "all employees of Newark Paperboard Products and/or Newark Paperboard Products Ltd. employed at 6001 Edwards Boulevard, Mississauga, in the Province of Ontario, save and except supervisors, persons above the rank of supervisor and office and clerical staff." (18 employees in unit)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	5

0086-07-R: Teamsters Local Union No. 938 (Applicant) v. Muskoka Delivery Services Inc. (Respondent)

Unit: "all employees of Muskoka Delivery Services Inc. in the Greater Sudbury Area in the Province of Ontario, save and except supervisors and persons above the rank of supervisor and sales staff." (57 employees in unit)

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	56
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	56
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	38
Number of ballots segregated and not counted	4

0182-07-R: Service Employees International Union Local 1.0n (Applicant) v. 1112824 Ontario Limited c.o.b. as Maple Crest Manor and as St. Andrew's Lodge & Rest Home/ 1562576 Ontario Inc. c.o.b. as Adelaide's Residence (Respondent)

Unit: "all employees of 1112824 Ontario Ltd./156276 Ontario Inc., 1112824 Ontario Limited cob as Maple Crest Manor and as St. Andrew's Lodge & Rest Home or 1562576 Ontario Inc. cob as Adelaide's Residence in the City of Hamilton, Ontario, save and except managers or persons above the rank of managers, Registered Nurses, physiotherapists, occupational therapists, delivery sales people, handymen and office and clerical staff" (14 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	8

Number of ballots segregated and not counted	0
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0251-07-R: Teamsters Local Union 847 (Applicant) v. A. Berger Precision Ltd. (Respondent)

Unit: "all employees of A. Berger Precision Ltd. working at the City of Brampton, Ontario, save and except supervisor and persons above the rank of supervisor, office and clerical staff, sales staff and students employed during the summer holidays" (89 employees in unit)

Number of names of persons on revised voters' list	90
Number of persons who cast ballots	89
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	73
Number of segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	45
Number of ballots segregated and not counted	0

0281-07-R: International Association of Machinists and Aerospace Workers (Applicant) v. Marquee Hotel Brampton Inc. o/a Fairfield Inn and Suites by Marriott Toronto Brampton (Respondent)

Unit: "all employees of Marquee Hotel Inc. o/a Fairfield Inn and Suites, in the City of Brampton, Ontario, save and except supervisors, persons above the rank of supervisor, front desk, office, clerical and security staff" (22 employees in unit)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	1

0319-07-R: International Association of Machinists and Aerospace Workers (Applicant) v. Howard Johnson Express Inn & Suites (Respondent)

Unit: "all employees of Howard Johnson Express Inn and Suite, in the City of Brampton, Ontario save and except supervisors, persons above the rank of supervisor, front desk, office, clerical and security staff" (8 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0

Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

0376-07-R: Communications, Energy and Paperworkers Union of Canada (Applicant) v. BPC Ontario Labs LP c.o.b. as MDS Diagnostics (Respondent)

Unit: "all employees of the employer in the City of London, save and except supervisors and persons above the rank of supervisors and students" (82 employees in unit)

Number of names of persons on revised voters' list	108
Number of persons who cast ballots	99
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	77
Number of segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	33
Number of ballots marked against applicant	44
Number of ballots segregated and not counted	22

0517-07-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Atlantic Industries Limited (Respondent)

Unit: "all employees of Atlantic Industries Limited in the Regional Municipality of Waterloo, save and except supervisors, persons above the rank of supervisor, office, clerical, sales, and technical staff" (22 employees in unit)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	1

Applications for Certification Withdrawn

1196-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cachet Estate Homes (Respondent)

3018-06-R: United Brotherhood of Carpenters and Joiners of America, Local 2000 (Applicant) v. Alaska Sash Door and Window Corp. Ltd. o/a Alaska Wood Industries (Respondent)

3867-06-R: Construction Workers Local 53 affiliated with the Christian Labour Association of Canada (Applicant) v. Kent-Erie Glass & Lock Inc. (Respondent) v. International Union of Painters and Allied Trades, Local 1494 (Intervenor)

4044-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Vicor Mechanical Ltd. (Respondent)

4122-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Lakeview Homes Inc., Majorwood Developments Inc., Lakeview Homes (East Brampton) Inc., Lakeview Homes (Fletchers) Inc., Antrex Corporation, Antrex Development Corporation (Respondent) v. Universal Workers Union, L.I.U.N.A. Local 183 (Intervenor)

0191-07-R: Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. A. Santin Mason Contractor Ltd. (Respondent)

0193-07-R: Sheet Metal Workers International Association, Local 51 (Applicant) v. Dominion Sheet Metal & Roofing Works (Respondent)

0306-07-R: Canadian Construction Workers' Union (Applicant) v. Burnac Corporation (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervenor)

0307-07-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Cadbury Adams Canada Inc. (Respondent)

0358-07-R: Teamsters Local Union 91 (Applicant) v. Foley Bus Lines Limited (Respondent)

0361-07-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Carl Coville c.o.b. as Westbrook Wall & Ceilings (Respondent)

0535-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Les Installations Sportives Defargo Inc. (Respondent)

0555-07-R: Canadian Union of Public Employees (Applicant) v. Children's Hospital of Eastern Ontario (CHEO) (Respondent)

0566-07-R: Canadian Union of Public Employees (Applicant) v. Tamir Foundation (Respondent)

0658-07-R: Canadian Union of Public Employees (Applicant) v. The Ontario Conference of Mennonite Brethren o/a Bethesda (Respondent) v. CUPE Local 2977 (Intervenor)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

2207-02-R: International Brotherhood of Electrical Workers, Local 636 (Applicant) v. Hydro Ottawa Holding Inc., Hydro Ottawa Limited, Energy Ottawa Inc., and, Telecom Ottawa Limited (Respondents) (*Granted*)

3134-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1614818 Ontario Inc. c.o.b. as Postma Concrete Forming and, 675606 Ontario Limited c.o.b. as Specific Utility Contractors (Respondents) v. Construction Workers Local 53 affiliated with Christian Labour Association of Canada (Intervenor) (*Withdrawn*)

0951-05-R: United Brotherhood of Carpenters and Joiners of America, Local 1988, Drywall and Acoustic Lathing and Insulation Local 675 United Brotherhood of Carpenters and Joiners of America (Applicants) v. Continental Acoustics & Drywall Inc. and, Delta Wall & Ceiling Systems Inc. (Respondents) (*Granted*)

1111-05-R: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. A.B.C. Electric Ltd., A.B.C. Electric Inc. (Respondents) (*Dismissed*)

0684-06-R: Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Sauve Builders Supply Ltd., Santsar Industries Inc. and, 1690091 Ontario Inc. (Respondents) (*Withdrawn*)

1083-06-R: International Brotherhood of Electrical Workers, Local 303 (Applicant) v. Peninsula Maintenance Ltd., 1525859 Ontario Limited (Respondents) (*Granted*)

1386-06-R: Ottawa-Carleton Public Employees Union (CUPE), Local 503 (Applicant) v. City of Ottawa, B & G Gorham Construction Inc., Rob Burns operating as Burns Landscape Maintenance, Concordia Paving Ltd., Thomas Cavanagh Construction Limited, Exel Contracting Inc., Jake's Lawn Care, Kern's Property Maintenance, Landtech Inc., Laurent Leblanc Limited, M.A. Thompson Cartage Limited, Malcolm Morris operating as Mac Morris Cartage & Equipment Rentals and Mac & Mike Morris Equipment Rentals, Mountainview Turf Farm Ltd., Yannick Brule operating as Need A Cut Services, Prop-Com Management Inc., Quinn & Company and Kanata West Landscape Maintenance (Respondent) (*Dismissed*)

2612-06-R: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 700 (Applicant) v. Collavino Incorporated, Collavino Structural Contractors Limited, Collavino International Contractors Ltd., P.C.R. Contractors Inc., 1307684 Ontario Ltd. c.o.b as Renaissance Precast Limited (Respondents) (*Withdrawn*)

2629-06-R: Sheet Metal Workers' International Association, Local 235 (Applicant) v. Collavino Incorporated and/or, Collavino Structural Contractors Limited and/or, Collavino International Contractors Ltd. and/or, P.C.R. Contractors Inc. (Respondents) (*Withdrawn*)

3001-06-R: Greater Ontario Regional Council of Carpenters Drywall & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Local 249 Zone 2 (Applicant) v. Tridian Acoustics & Interior Systems Inc. and, Tridian Inc. (Respondents) (*Withdrawn*)

3129-06-R: Women's Crisis Services of Waterloo Region (Applicant) v. Canadian Union of Public Employees and its Local 1882 ("CUPE"), National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) ("CAW") (Respondents) (*Granted*)

3134-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1614818 Ontario Inc. c.o.b. as Postma Concrete Forming and 675606 Ontario Limited c.o.b. as Specific Utility Contractors, Responding Parties v. Construction Workers Local 53 affiliated with Christian Labour Association of Canada, (Intervenor) (*Withdrawn*)

3279-06-R: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. 1690148 Ontario Inc. and, Walls.Com.Inc. (Respondents) (*Withdrawn*)

3363-06-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Toddglen Construction Limited and, Toddglen Boot Limited (Respondents) (*Withdrawn*)

3432-06-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. S7 Construction and, 1693036 Ontario Ltd. (Respondents) (*Withdrawn*)

3951-06-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. New Look Construction Ltd. and/or, Dream Homes Canada Ltd. (Respondents) (*Endorsed Settlement*)

0313-07-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Westwood Drywall Inc., Whitmore Interiors Inc., Von Drywall Ltd. (Respondents) (*Withdrawn*)

SALE OF A BUSINESS

2207-02-R: International Brotherhood of Electrical Workers, Local 636 (Applicant) v. Hydro Ottawa Holding Inc., Hydro Ottawa Limited, Energy Ottawa Inc., and, Telecom Ottawa Limited (Respondents) (*Granted*)

0951-05-R: United Brotherhood of Carpenters and Joiners of America, Local 1988, Drywall and Acoustic Lathing and Insulation Local 675 United Brotherhood of Carpenters and Joiners of America (Applicants) v. Continental Acoustics & Drywall Inc. and, Delta Wall & Ceiling Systems Inc. (Respondents) (*Granted*)

1111-05-R: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. A.B.C. Electric Ltd., A.B.C. Electric Inc. (Respondents) (*Dismissed*)

0684-06-R: Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Sauve Builders Supply Ltd., Santsar Industries Inc. and, 1690091 Ontario Inc. (Respondents) (*Withdrawn*)

1083-06-R: International Brotherhood of Electrical Workers, Local 303 (Applicant) v. Peninsula Maintenance Ltd., 1525859 Ontario Limited (Respondents) (*Granted*)

1386-06-R: Ottawa-Carleton Public Employees Union (CUPE), Local 503 (Applicant) v. City of Ottawa, B & G Gorham Construction Inc., Rob Burns operating as Burns Landscape Maintenance, Concordia Paving Ltd., Thomas Cavanagh Construction Limited, Exel Contracting Inc., Jake's Lawn Care, Kern's Property Maintenance, Landtech Inc., Laurent Leblanc Limited, M.A. Thompson Cartage Limited, Malcolm Morris operating as Mac Morris Cartage & Equipment Rentals and Mac & Mike Morris Equipment Rentals, Mountainview Turf Farm Ltd., Yannick Brule operating as Need A Cut Services, Prop-Com Management Inc., Quinn & Company and Kanata West Landscape Maintenance (Respondent) (*Dismissed*)

2079-06-R: The Canadian Union of Postal Workers (CUPW) (Applicant) v. Distinction Maintenance Services, J & A Building Services Ltd. (Respondents) v. Universal Workers Union, LIUNA Local 183 (Intervenor) (*Withdrawn*)

2612-06-R: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 700 (Applicant) v. Collavino Incorporated, Collavino Structural Contractors Limited, Collavino International Contractors Ltd., P.C.R. Contractors Inc., 1307684 Ontario Ltd. c.o.b as Renaissance Precast Limited (Respondents) (*Withdrawn*)

2629-06-R: Sheet Metal Workers' International Association, Local 235 (Applicant) v. Collavino Incorporated and/or, Collavino Structural Contractors Limited and/or, Collavino International Contractors Ltd. and/or, P.C.R. Contractors Inc. (Respondents) (*Withdrawn*)

3001-06-R: Greater Ontario Regional Council of Carpenters Drywall & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Local 249 Zone 2 (Applicant) v. Tridian Acoustics & Interior Systems Inc. and, Tridian Inc. (Respondents) (*Withdrawn*)

3129-06-R: Women's Crisis Services of Waterloo Region (Applicant) v. Canadian Union of Public Employees and its Local 1882 ("CUPE"), National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) ("CAW") (Respondents) (*Granted*)

3279-06-R: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. 1690148 Ontario Inc. and, Walls.Com.Inc. (Respondents) (*Withdrawn*)

3363-06-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Toddglen Construction Limited and, Toddglen Boot Limited (Respondents) (*Withdrawn*)

3432-06-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. S7 Construction and, 1693036 Ontario Ltd. (Respondents) (*Withdrawn*)

3951-06-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. New Look Construction Ltd. and/or, Dream Homes Canada Ltd. (Respondents) (*Endorsed Settlement*)

0313-07-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Westwood Drywall Inc., Whitmore Interiors Inc., Von Drywall Ltd. (Respondents) (*Withdrawn*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

2960-06-R: Joseph Ryan Oliverson (Applicant) v. The International Brotherhood of Electrical Workers and The IBEW Construction Council of Ontario (Respondent) v. Dryden Electrix Inc. (Intervenor) (*Dismissed*)

3458-06-R: The Employees of Aves and Shaw Limited (Applicant) v. International Union of Painters and Allied Trades, Local 1824 (Respondent) v. Aves & Shaw Ltd (Intervenor) (*Granted*)

Unit: "all painters and painters' apprentices in the employ of the employer in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	4
Number of ballots segregated and not counted	0

3653-06-R: Thomas Leedham (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of United States and Canada, Local 787 (Respondent) (*Granted*)

Unit: "(a) all journeyman and apprentice refrigeration and air conditioning mechanics, save and except persons above the rank of working foreman, employed by Air Kool Limited in the ICI sector of the construction industry in the Province of Ontario; (b) all journeyman and apprentice refrigeration and air conditioning mechanics, save and except persons above the rank of working foreman, employed by Air Kool Limited in the Province of Ontario in all construction work other than construction work in the ICI sector." (6 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	4
Number of ballots segregated and not counted	8

3669-06-R: Keith Lake (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 1669 (Respondent) v. Jamel Contracting Limited (Intervenor) (*Granted*)

Unit: "all journeymen and apprentice carpenters, other than millwrights, engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario" (7 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	4
Number of ballots segregated and not counted	5

3845-06-R: James Crow (Applicant) v. International Union of Painters and Allied Trades, Locals 114, 200, 205, 557, 1494, 1487, 1590, 1630, 1671, 1795, 1819, 1824, 1891, and 1904 and, the Ontario Council of the International Union of Painters and Allied Trades (Respondents) v. Kent-Erie Glass & Lock Inc. (Intervenor) (*Granted*)

Unit: "all journeymen and apprentice glaziers and metal mechanics in the employ of Kent-Erie Glass & Lock Inc. in the industrial, commercial, and institutional sector of the construction industry in the Province of Ontario, save and except non-working foreman and persons above the rank of non-working foreman." (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	0
Number of ballots segregated and not counted	0

3870-06-R: Vernon Brant (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 221, (Respondent) v. Mechanical Pipe Systems (Kingston) Ltd. (Intervenor) (*Withdrawn*)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Mechanical Pipe Systems (Kingston) Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (1 employees in unit)

Number of names of persons on revised voters' list	1
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

3974-06-R: Scott Hinds, employee of Aqualine Fire Division of Aqualine Systems Inc. (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 853 (Respondent) (*Withdrawn*)

Unit: "all sprinkler fitters and sprinkler fitters' apprentices in the employ of Aqualine Fire Division of Aqualine Systems Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all sprinkler fitters and sprinkler fitters' apprentices in the employ of Aqualine Fire Division of Aqualine Systems Inc. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (0 employees in unit)

Number of names of persons on revised voters' list	1
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

4152-06-R: David Dunec, Ken Otto (Applicant) v. Ontario Council of the International Union of Painters and Allied Trades and the International Union of Painters and Allied Trades, Local Union 1487 (Respondent) v. Adanac Glass Limited (Intervenor) (*Granted*)

Unit: "all residential glaziers of all employers engaged in the residential sector of the construction industry and performing residential glazing work including pieceworkers and working foreman in the following territorial jurisdiction: in Halton (R.M.); that portion east of the eighth line and south of Highway 401; Peel (R.M.); York (R.M.); Metropolitan Toronto; County of Simcoe, District of Muskoka; and in Durham (R.M.) the Township of Uxbridge and the Towns of Ajax, Pickering and Whitby." (0 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	0

4165-06-R: Bonnie Smith (Applicant) v. Ontario Nurses' Association (Respondent) v. Saint Elizabeth Health Care (Intervenor) (*Dismissed*)

Unit: "The Employer recognizes Ontario Nurses' Association as the exclusive bargaining agent for all Registered Nurses and Graduate Nurses engaged in a nursing capacity of Saint Elizabeth Health Care - Durham Region in the Regional Municipality of Durham, save and except Program Managers, persons above the rank of Program Manager, Registered Practical Nurses and Graduate Practical Nurses, Home Support Staff, and office and clerical staff; and all office and clerical staff of Saint Elizabeth Health Care - Durham in the Regional Municipality of Durham save and except Program Managers, persons above the rank of Program Manager, Registered Practical Nurses and Graduate Practical Nurses, and Home Support Staff" (48 employees in unit)

Number of names of persons on revised voters' list	47
Number of persons who cast ballots	36
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	26
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	3

0007-07-R: Jaye Bergman, Ian Stark, Clint Van Wallingham, and Kyle Wilson (Applicant) v. United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Respondent) v. Jarnel Contracting Ltd. (Intervenor) (*Withdrawn*)

Unit: "all carpenters and apprentice carpenters, other than millwrights, employed in the ICI sector in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foremen." (9 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

0142-07-R: Thomas Leedham (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of United States and Canada, Local 787 (Respondent) (*Granted*)

Unit: "all refrigeration and air conditioning mechanics and apprentice refrigeration and air conditioning mechanics in the employ of Air Kool Limited in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman." (1 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	1
Number of ballots segregated and not counted	0

0148-07-R: Steve Kramer (Applicant) v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers District Council of Ontario (Respondent) (*Withdrawn*)

Unit: "All ironworkers and ironworker apprentices in the employ of Holman's Welding Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (1 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1

0178-07-R: David Jones and Pierre Andre Bonnard for the employees of IKO – Hawkesbury (Applicant) v. United Steel Workers of America (U.S.W.A.) (Respondent) v. IKO Industries Ltd. (Intervenor) (*Granted*)

Unit: "all employees of the company at its plant in Hawkesbury, Ontario, save and except foremen, persons above the rank of foremen, office and sales staff, students and persons working twenty-four (24) hours or less per week." (49 employees in unit)

Number of names of persons on revised voters' list	53
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	33
Number of ballots segregated and not counted	0

0218-07-R: Derwin Clarke (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 27 (Respondent) v. Dominion Caulking Ltd. and Langstaff Restorations Ltd. (Intervenor) (*Granted*)

Unit: "all journeymen and apprentice carpenters, other than millwrights, engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario for whom the union has bargaining rights." (4 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	3
Number of ballots segregated and not counted	0

0220-07-R: Lil Nobel on behalf of the Employees of UJA Federation and The Canadian Jewish Congress (Applicant) v. Canadian Union of Public Employees (CUPE) (Respondent) (*Granted*)

Unit: "all employees of the United Jewish Welfare Fund of Toronto, United Jewish Appeal of Greater Toronto, the Jewish Federation of Greater Toronto and the Toronto employees of the Canadian Jewish Congress, save and except the President, Vice-Presidents, Campaign Director, Senior Fund Executive, Director of Jewish Foundation, Director of Human Resources, Directors of Community Planning and Allocations, Office/Building Manager, Executive Assistant to the President, Director Communications, Director Information Technology, Controller, Accountant, Payroll Administrator, Human Resources Administrator, Professional/Rabbinical staff of the Kashruth Council/Orthodox Division, Executive Director Ontario Region, (Employees covered by existing Collective Agreements), Professional Staff of the Canadian Jewish Congress, part-time employees who work less than half time and Professional employees hired for a period of less than six (6) months In addition a total of six (6) positions of Associate Campaign Director and/or Assistant Campaign Director, and eight (8) Jewish Toronto Tomorrow Project Manager positions shall be excluded." (64 employees in unit)

Number of names of persons on revised voters' list	67
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	48
Number of ballots segregated and not counted	0

0264-07-R: Bill Martin (Applicant) v. Greater Ontario Regional Council of Carpenters, Drywall and Allied Trades Local 249 (Respondent) v. Wexford Concrete Ltd. (Intervenor) (*Granted*)

Unit: "all journeymen and apprentice carpenters, other than millwrights, engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario for whom the Union has bargaining rights." (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	2
Number of ballots segregated and not counted	0

0333-07-R: Brenda Stainton (Applicant) v. Service Employees International Union Local 1.0n (Respondent) (*Granted*)

Unit #1: "Long Term Care Home Peterborough, Ontario" (66 employees in unit)

Number of names of persons on revised voters' list	67
Number of persons who cast ballots	57
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on	0

voters' list	
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	56
Number of ballots segregated and not counted	0

0402-07-R: Kelly Collins (Applicant) v. CUPE Local 4741 (Respondent) v. Stewart Homes (Intervenor) (*Granted*)

Unit: "all employees of Stewart Homes in The Region of Durham, save and except Supervisors, persons above the rank of Supervisor and all office staff of whatever rank and all maintenance workers" (84 employees in unit)

Number of names of persons on revised voters' list	101
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	25
Number of ballots segregated and not counted	1

0439-07-R: Marcel Giroux (Applicant) v. Retail, Wholesale and Department Store Union, District Council - of the - United Food and Commercial Workers International Union (Respondent) v. Evans Lumber & Builders Supply Limited (Intervenor) (*Granted*)

Unit: "all "outside employees" of the Company, being the part-time and full-time employees of the Company employed in the Yard, the Glass Shop and the Carpenter's Shop ("Mill"), save and except supervisors and those above the rank of supervisor" (23 employees in unit)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	15
Number of ballots segregated and not counted	4

0492-07-R: Mark Jones (Applicant) v. Universal Workers Union, L.I.U.N.A., Local 183 (Respondent) v. Yorkwood Homes (Intervenor) (*Dismissed*)

REFERRAL FROM MINISTER (SECTION 115 FORMERLY SECT 109)

1369-06-M: Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880 (Applicant) v. Sauve Builders Supplies Ltd., 1690091 Ontario Inc., Santsar Industries Inc. (Respondents) (*Terminated*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2794-05-U: Canadian Union of Public Employees and its Local 3798.07 (Applicant) v. Treasure House Ministries (Respondent) (*Withdrawn*)

3270-05-U: Wendy Goring (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario, as represented by the Ministry of Community Safety & Correctional Services (Intervenor) (*Dismissed*)

3551-05-U: Paul Chadwick Wilson (Applicant) v. Communications, Energy and Paperworkers Union of Canada and its Local 306-0 (Respondent) v. Unimin Canada Ltd. (Intervenor) (*Dismissed*)

3600-05-U: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. B.G. Schickedanz Investments Limited and/or My Building Corporation and/or B.G. Schickedanz Homes Inc. and/or 1087086 Ontario Inc. c.o.b. as Baxter Creek Estates (Respondent) (*Withdrawn*)

3839-05-U: Paul O'Connor (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Ministry of Finance (Intervenor) (*Dismissed*)

0191-06-U; 0321-06-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Pro-Tek Mechanical Inc.; Pro-Tek Mechanical Inc. (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Respondent) (*Withdrawn*)

0301-06-U: UFCW Canada and UFCW Local 421 (Applicant) v. Famous Players Limited Partnership-Coliseum Mississauga and Cineplex Entertainment Corporation (Respondent) (*Endorsed Settlement*)

0482-06-U: Teamsters Local Union 938 (Applicant) v. Ontario Lottery and Gaming Corporation (Point Edward Charity Casino) (Respondent) (*Withdrawn*)

0947-06-U: Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Applicant) v. Trilogy Long Term Care Inc. (Respondent) v. Canadian Union of Public Employees (Intervenor) (*Withdrawn*)

1599-06-U: Paul O'Connor (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Ministry of Finance (Intervenor) (*Dismissed*)

1620-06-U: Milijan Jovanovic (Applicant) v. Amalgamated Transit Union Local 107 (Respondent) v. The Hamilton Street Railway division of the City of Hamilton (Intervenor) (*Dismissed*)

1656-06-U: Jacqueline Tabram (Applicant) v. The Canadian Union of Public Employees, Local 3251 (Respondent) (*Dismissed*)

1721-06-U: Eric Gagnon (Applicant) v. Syndicat canadien des communications, de l'énergie et du papier Local 102-0 (Respondent) v. The Ottawa Citizen Group Inc. (Intervenor) (*Withdrawn*)

1798-06-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Maple Leaf Consumer Foods Inc. (Respondent) (*Withdrawn*)

1831-06-U: Jeanne Bratt (Applicant) v. CAW Local 1973 (Respondent) v. General Motors Windsor Transmission Plant (Intervenor) (*Withdrawn*)

1910-06-U: Wellesley Attwell (Applicant) v. Communications, Energy and Paper Workers Union of Canada (Respondent) (*Dismissed*)

2030-06-U: United Brotherhood of Carpenters and Joiners of America, Local 2000 (Applicant) v. Alaska Sash Door and Window Corp. Ltd. o/a Alaska Wood Industries (Respondent) (*Withdrawn*)

2180-06-U: Nelson Wall (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervenor) (*Dismissed*)

2382-06-U: United Food Commercial Workers Canada, Local 175 (Applicant) v. Liberte Natural Foods Inc. (Respondent) (*Withdrawn*)

2435-06-U: Annmarie Satchell (Applicant) v. Service Employees International Union, Local 1.0n (Respondent) (*Dismissed*)

2468-06-U: James R. Barr (Applicant) v. United Food & Commercial Workers Canada Locals 175 & 633 (Respondent) v. Coca-Cola Bottling Company (Intervenor) (*Withdrawn*)

2491-06-U: Carey Durham (Applicant) v. Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 880 (Respondent) v. Lafarge North America Inc. (Intervenor) (*Dismissed*)

2722-06-U: Frideriki (Freda) Tzigeris (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 3950-60 (Respondent) (*Dismissed*)

2814-06-U: Service Employees International Union Local 1.0n (Applicant) v. Lennox & Addington Resources for Children (Respondent) (*Withdrawn*)

3328-06-U: Teamsters Local Union 847 (Applicant) v. Scotch Bakery Ltd. (Respondent) (*Withdrawn*)

3337-06-U: Shawn Major (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 95, and, Martinrea Fabco Metallic Canada Inc. (Respondents) (*Dismissed*)

3340-06-U: Maria Lollino (Applicant) v. UNITE HERE Canada (Respondent) (*Dismissed*)

3364-06-U: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Toddglen Construction Limited and, Toddglen Boot Limited (Respondents) (*Withdrawn*)

3430-06-U: Tom Lucas (Applicant) v. Ontario Public Service Employees Union (Respondent) (*Dismissed*)

3459-06-U: Peter Kapa (Applicant) v. Teamster Local Union 847 (Respondent) (*Withdrawn*)

3538-06-U: Karen Grywachski (Applicant) v. Canadian Union of Public Employees CUPE Local 5167 (Respondent) v. The City of Hamilton (Intervenor) (*Dismissed*)

3672-06-U: Limen Masonry Limited, Limen Group Ltd., Limen Masonry (2003) Inc., Limen Enterprises (2003) Inc., Joe Lima and, Anthony Lima (Applicants) v. Brick and Allied Craft Union of Canada, Brick and Allied Craft Union of Canada, Local 2, Brick and Allied Craft Union of Canada, Local 1, Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers and, Thomas Williams (Respondents) v. Masonry Industry Employers' Council of Ontario and the OMCA-BACU Bargaining Committee, Brick and Allied Craft Union of Canada, Local 31 (Marble Tile & Terrazzo), International Union of Bricklayers and Allied Craftworkers, International Union of Bricklayers and Allied Craftworkers, Local 6, International Union of Bricklayers and Allied

Craftworkers, Local 7 and International Union of Bricklayers and Allied Craftworkers, Local 20 (Intervenors) *(Dismissed)*

3804-06-U: John Maida (Applicant) v. United Food and Commercial Workers International Union, Local 1000A (Respondent) *(Withdrawn)*

3808-06-U: Diana Kowalski (Applicant) v. Canadian Union of Public Employees, Local 1287 (Respondent) v. Regional Municipality of Niagara (Intervenor) *(Withdrawn)*

3861-06-U: Jean (John) Dionne (Applicant) v. Mike Williams/Per-Arne Forsman/Neil Armstrong/ Richard Hadley (Respondent) v. ESAB Group Canada Inc. (Intervenor) *(Dismissed)*

3923-06-U: Canadian Union of Public Employees (Applicant) v. Maryvale Adolescent and Family Services (Respondent) v. Dave Crowther (Intervenor) *(Withdrawn)*

3954-06-U: United Food Commercial Workers Canada, Local 175 (Applicant) v. Supermarche de Hearst (Respondent) *(Withdrawn)*

3956-06-U: Jenny Lopez (Applicant) v. CAW-Canada Local #40 (Respondent) v. Bond Place Hotel (Intervenor) *(Withdrawn)*

4011-06-U: Gordon Blake (Applicant) v. International Brotherhood of Electrical Workers, Local 804 (Respondent) *(Dismissed)*

0049-07-U: UNITE HERE (Applicant) v. The Suites at 1 King West Inc., and/or Stinson Hospitality Inc. and 2076564 Ontario Inc. (Respondent) *(Withdrawn)*

0059-07-U: Communications, Energy and Paperworkers Union of Canada, Local 87-M Southern Ontario Newsmedia Guild (Applicant) v. Sun Media Corporation c.o.b. as The Ottawa Sun (Respondent) *(Withdrawn)*

0101-07-U: Lynne Marie Bonnell (Applicant) v. Labourers Union of North America (L.I.U.N.A.) (Respondent) *(Terminated)*

0103-07-U: Robert Stillaway (Applicant) v. Power Workers Union (Respondent) v. Ontario Power Generation Inc. (Intervenor) *(Withdrawn)*

0194-07-U: Monique Savin (Applicant) v. United Food and Commercial Workers International Union, Local 333 (Canadian Security Union) (Respondent) *(Dismissed)*

0244-07-U: Andres Basco (Applicant) v. Teamsters Local Union 938 (Respondent) v. Tank Truck Transport Inc. (Intervenor) *(Dismissed)*

0423-07-U: Abdulaziz Albadri (Applicant) v. Ontario Taxi Union Caw Local 1688 Of National Automobile, Aerospace, Transportation And General Workers' Union Of Canada (Caw-Canada) (Respondent) *(Terminated)*

0448-07-U: Service Employees International Union Local 2.on Brewery, General and Professional Workers Union (Applicant) v. Bee-Clean (Toronto) Limited (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

0309-07-M: Seal-On Paving Ltd. (Applicant) v. Labourers' International Union of North America, Local 625 (Respondent) *(Withdrawn)*

JURISDICTIONAL DISPUTES

3368-05-JD: The International Union of Painters and Allied Trades Local 1494 (Applicant) v. Electrical Power Systems Construction Association, Focus Office Furniture Inc., Bruce Power LP, Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Respondents) (*Granted*)

0504-06-JD: Ontario Provincial Council of the International Union of Painters and Allied Trades, International Union of Painters and Allied Trades, Local 1590 (Applicant) v. Babcock & Wilcox Canada, and, The International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Respondents) v. The Electrical Power Systems Construction Association, Bruce Power LP (Intervenors) (*Dismissed*)

2210-06-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Bruce Power LP and, Sheet Metal Workers' International Association, Local 473 (Respondents) (*Withdrawn*) (*Having regard to the agreement of the parties.*)

2969-06-JD: Sheet Metal Workers' International Association Local 30 (Applicant) v. Wheelwright Group Inc., International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721, United Brotherhood of Carpenters and Joiners of America, Local 27 (Respondents) (*Dismissed*)

3016-06-JD: Ontario Nurses' Association (Applicant) v. Canadian Union of Public Employees, Local 4000 and, The Ottawa Hospital (Respondents) (*Withdrawn*)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

0150-06-OH: Gary J. Mero (Applicant) v. Conduct Industries (Respondent) (*Dismissed*)

0487-06-OH: Kristine Neville (Applicant) v. Dr. Cathy Emms, Ivy Veterinary Services (Respondent) (*Dismissed*)

2429-06-OH: Zeljana Bajkanovic (Applicant) v. Stock Transportation (Respondent) (*Terminated*) (*Having regard to the agreement of the parties.*)

3152-06-OH: Raffaella Grace Fabiano (Applicant) v. Bouquet On Mercer (Respondent) (*Endorsed Settlement*)

3479-06-OH: Jivaro Smith (Applicant) v. Icon Digital Productions Inc. (Respondent) (*Withdrawn*)

3675-06-OH: Dorothy Way Armstrong (Applicant) v. Ross Windows & Doors (Parry Sound Glass) (Respondent) (*Terminated*) (*Having regard to the agreement of the parties.*)

3809-06-OH: Geri Brianese (Applicant) v. Motorcade Auto Parts and Accessories (Respondent) (*Withdrawn*)

3938-06-OH: Brenda C. Castle (Applicant) v. Nucomm International (Respondent) (*Withdrawn*) (*Having regard to the agreement of the parties.*)

4142-06-OH: John Wales (Applicant) v. Toronto Transit Commission (Respondent) v. The Amalgamated Transit Union, Local 113 (Intervenor) (*Dismissed*)

0018-07-OH: Angelo Nikolovski (Applicant) v. Bausch & Lomb Canada (Respondent) (*Terminated*)

0351-07-OH: Robert B. Langlois (Applicant) v. Russel Metals Inc. (Respondent) (*Terminated*)

CONSTRUCTION INDUSTRY GRIEVANCES

1990-05-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. City of Toronto (Respondent) (*Endorsed Settlement*)

1991-05-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. City of Toronto (Respondent) (*Endorsed Settlement*)

1992-05-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. City of Toronto (Respondent) (*Withdrawn*)

2034-05-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. City of Toronto (Respondent) v. Kenaidan Contracting Ltd. (Intervenor) (*Withdrawn*)

4018-05-G: Brick and Allied Craft Union of Canada, Local 10 and International Union of Bricklayers and Allied Craftworkers, Local 10 (Applicant) v. Bondfield Construction Co. Ltd. (Respondent) (*Granted*)

1160-06-G: United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Bellai Brothers Construction Limited (Respondent) (*Withdrawn*)

1795-06-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Durr Industries Inc. (Respondent) (*Withdrawn*)

2830-06-G; 2831-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Power Mechanical Inc. (Respondent) (*Endorsed Settlement*)

3368-06-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Dival Developments Ltd. and/or, Tri-Star Forming Ltd. and/or, E-Zee Forming Ltd. (Respondents) (*Withdrawn*)

3433-06-G: United Brotherhood of Carpenters and Joiners of America, 397 (Applicant) v. 1693036 Ontario Ltd. (Respondent) (*Withdrawn*)

3434-06-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1693036 Ontario Ltd. (Respondent) (*Withdrawn*)

3471-06-G; 3472-06-G: Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. P.G.S. Forming Inc.; Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. P.G.S. Forming Inc. and Pier Giorgio Silverstri (Respondent) (*Granted*)

3950-06-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. New Look Construction Ltd. and/or, Dream Homes Canada Ltd. (Respondents) (*Endorsed Settlement*)

4175-06-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Royce Metal Products Limited (Respondent) (*Withdrawn*)

0051-07-G: International Union of Operating Engineers, Local 793 (Applicant) v. Fiorini Paving Company Limited (Respondent) (*Granted*)

0082-07-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Yustin Interiors Ltd. and, Deborah Yustin (Respondents) (*Endorsed Settlement*)

0119-07-G: International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. 894907 Ontario Ltd. c.o.b. as Simcoe York Electric (Respondent) (*Endorsed Settlement*)

0183-07-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rocan Construction Ltd. and Janine Campbell (Respondent) (*Endorsed Settlement*)

0192-07-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. M.J. Dixon Construction Limited (Respondent) (*Granted*)

0195-07-G: Labourers' International Union of North America, Local 506 (Applicant) v. PGS Forming Limited (Respondent) (*Withdrawn*)

0250-07-G: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. 3247481 Canada Inc. o/a Cayer Construction (Respondent) (*Granted*)

0253-07-G: Labourers' International Union of North America, Local 506 (Applicant) v. Stonhard Ltd. (Respondent) (*Withdrawn*)

0314-07-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Von Drywall Ltd. (Respondent) (*Withdrawn*)

0353-07-G: International Union of Operating Engineers, Local 793 (Applicant) v. Sutherland & Sons Excavating Ltd. (Respondent) (*Granted*)

0436-07-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Carleton Electric Limited (Respondent) (*Withdrawn*)

0459-07-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Whitmore Interiors Inc. (Respondent) (*Granted*)

0464-07-G: Operative Plasterers', Cement Masons', Restoration Steeplejacks International Association of the United States and Canada, Union Local 598 (Applicant) v. Colonial Building Restoration (Respondent) (*Withdrawn*) (*Having regard to the agreement of the parties.*)

0481-07-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1333975 Ontario Inc. c.o.b. as Niveau Construction (Respondent) (*Granted*)

0499-07-G: The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. Clegg Glass Limited (Respondent) (*Granted*)

0519-07-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Westview Electric Contractors Inc. (Respondent) (*Granted*)

0572-07-G: International Brotherhood of Painters and Allied Trades, Local 1819 (Applicant) v. 2111417 Ontario Inc. (Respondent) (*Granted*)

0663-07-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Concord Glazing Systems Inc. (Respondent) (*Granted*)

0679-07-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Unitech Electric Inc. (Respondent) (*Endorsed Settlement*)

0687-07-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 1232427 Ontario Ltd. c.o.b. as TGM Services, Marksbury Group Ltd. (Respondent) (*Granted*)

APPEALS - EMPLOYMENT STANDARDS ACT

2588-02-ES; 1240-03-ES: Casino Rama Services Inc. (Applicant) v. Janice Boume et al and Director of Employment Standards; Casino Rama (Applicant) v. Geoffrey Williams, Angela Lavallee, and Director of Employment Standards (Respondents) (*Granted*)

1382-05-ES: Cellar Tap Brew Pub & Grill (Applicant) v. John Paul Valcourt and Director of Employment Standards (Respondents) (*Dismissed*)

1670-05-ES: Sharon-Anne Rebelo (Applicant) v. Advance Enterprises Inc o/a Advance Driver Training, Director of Employment Standards (Respondents) (*Terminated*)

2538-05-ES; 2539-05-ES; 2540-05-ES; 2541-05-ES; 2542-05-ES; 2543-05-ES; 2544-05-ES; 2545-05-ES; 2579-05-ES; 2580-05-ES; 2581-05-ES; 2583-05-ES; 2584-05-ES; 2585-05-ES; 2586-05-ES; 2587-05-ES: David Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Josh Hatch, Director of Employment Standards; David Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Ken Lisabeth, Director of Employment Standards; David Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Ken Davey, Director of Employment Standards; David Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Kevin Boyd, Director of Employment Standards; David Hayes a Director of 1129369 o/a DH Machine & Tool (Applicant) v. Steve Wiendels, Director of Employment Standards; David Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Gregory Gubinczki, Director of Employment Standards; David Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Mark Van Hooren, Director of Employment Standards; David Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Donald Drown, Corey Broadbent, Dana Pinnell, Jason Thuss, Justin Swan, Matt Dalton, Pat Sagriff and, Director of Employment Standards; Karen Hayes a Director of 1229369 Ontario Ltd. o/a DH Machine & Tool (Applicant) v. Kevin Boyd, Director of Employment Standards; Karen Hayes a Director of 1229369 Ontario Ltd. o/a DH Machine & Tool (Applicant) v. Corey Broadbent, Dana Pinnell, Donald Drown, Jason Thuss, Justin Swan, Matt Dalton, Pat Sagriff, Director of Employment Standards; Karen Hayes a director of 1229369 Ontario Ltd. d/a DH Machine & Tool (Applicant) v. Ken Lisabeth, Director of Employment Standards; Karen Hayes a Director of 1229369 Ontario Ltd. o/a DH Machine & Tool (Applicant) v. Ken Davey, Director of Employment Standards; Karen Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Mark Van Hooren, Director of Employment Standards; Karen Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Gregory Gubinczki, Director of Employment Standards; Karen Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Josh Hatch, Director of Employment Standards; Karen Hayes a Director of 1129369 Ontario Limited o/a DH Machine & Tool (Applicant) v. Steve Wiendels, Director of Employment Standards (Respondents) (*Dismissed*)

3705-05-ES: Peter J. Doucet (Applicant) v. Elizabeth Pittui and Director of Employment Standards (Respondents) (*Dismissed*)

0253-06-ES: Jamie Woodworth (Applicant) v. 1185355 Ontario Ltd. o/a Arizona Tan and Director of Employment Standards (Respondents) (*Dismissed*)

0682-06-ES: Mary Elizabeth Raftis (Applicant) v. Thorium Contracting Limited/Stud Woodworking Inc. and Director of Employment Standards (Respondents) (*Granted*)

0833-06-ES: Ilaris Corporation (Applicant) v. Victor Chirikov, Tatiana Chlygina and Director of Employment Standards (Respondents) (*Dismissed*) 1007-06-ES: Flying M Truck Service Inc. (Applicant) v. John Docherty and Director of Employment Standards (Respondents) (*Terminated*)

1331-06-ES: Sarah Royer (Applicant) v. Burger King, Director of Employment Standards (Respondents) (*Terminated*)

1359-06-ES; 1362-06-ES: 1022239 Ontario Inc. o/a 7500 Taxi (Applicant) v. Raywood Dawson and Director of Employment Standards; Raywood Dawson (Applicant) v. 1022239 Ontario Inc. o/a 7500 Taxi and Director of Employment Standards (Respondents) (*Terminated*)

1360-06-ES: Seventy-Five Hundred Taxi Inc. operating as 7500 Taxi (Applicant) v. Gregory Vance and Director of Employment Standards (Respondents) (*Granted*)

1411-06-ES: The Northern Edge Merchandising Co. Ltd. o/a North of the Border (Applicant) v. Christina Hoffman and Director of Employment Standards (Respondents) (*Granted*)

1434-06-ES; 1435-06-ES: Eric Rechnitzer (Applicant) v. Vio-Systems Inc. and Director of Employment Standards; (Ted) Kenneth E. Mitchell (Applicant) v. Vio Eco Water Systems and Director of Employment Standards (Respondents) (*Granted*)

1672-06-ES: K. Michael Sine a Director of Sine Wave Networks Inc. (Applicant) v. Jacob Spoelder, Director of Employment Standards (Respondents) (*Terminated*)

1808-06-ES: Calabogie Peaks Inc. (Applicant) v. Robert Drew and Director of Employment Standards (Respondents) (*Granted*)

1877-06-ES: Estelita Lacson (Applicant) v. North York General Hospital, Director of Employment Standards (Respondents) (*Dismissed*)

2022-06-ES: Lee Anne-Lay, a Director of 2009861 Ontario Ltd. o/a First Rate Personnel (Applicant) v. Dave Legare, Gilles Babin and Director of Employment Standards (Respondents) (*Granted*)

2095-06-ES: 1546617 Ontario Ltd. operating as Toperns (Applicant) v. Dung Le, and Director of Employment Standards (Respondents) (*Granted*)

2182-06-ES: Darryl Finley (Applicant) v. Invantage Manufacturing Inc. and Director of Employment Standards (Respondents) (*Granted*)

2212-06-ES; 2213-06-ES; 2214-06-ES; 2215-06-ES: Halton Recycling Ltd. (Applicant) v. Fred Collette and Director of Employment Standards (Respondents) (*Endorsed Settlement*)

2307-06-ES: Shawn Hollos (Applicant) v. Cementation Canada Inc. and Director of Employment Standards (Respondents) (*Dismissed*)

2311-06-ES: Ultramar Ltee/Ultramar Ltd. (Applicant) v. Jiri (George) Nykl and Director of Employment Standards (Respondents) (*Granted*)

2401-06-ES: Tim Harnick (Applicant) v. Responsive Multi-Tech Services Ltd. and Director of Employment Standards (Respondents) (*Dismissed*)

2413-06-ES: Jeffrey R. McNutt (Applicant) v. Abrams Towing o/a 1512081 Ontario Limited, Director of Employment Standards (Respondents) (*Granted*)

2471-06-ES; 2472-06-ES: Premier Fitness (Applicant) v. Janis Strathdee and, Director of Employment Standards; Premier Fitness (Applicant) v. Elaine Fletcher and, Director of Employment Standards (Respondents) (*Dismissed*)

2496-06-ES: 4096401 Canada Inc. (Applicant) v. Darren McClurg and Director of Employment Standards (Respondents) (*Terminated*)

2515-06-ES: Rajae Elalami (Applicant) v. Dr. Emad Hanna, Director of Employment Standards (Respondents) *(Dismissed)*

2844-06-ES: Muskoka Lakes Golf & Country Club, Limited (Applicant) v. Bianca Liepins and Director of Employment Standards (Respondents) *(Granted)*

2925-06-ES: Evangeline Persaud (Applicant) v. Reitmans Canada Limited and Director of Employment Standards (Respondents) *(Dismissed)*

2930-06-ES: Odyssey Dental Management and Communications Inc. (Applicant) v. Janet Pape and Director of Employment Standards (Respondents) *(Withdrawn)*

2979-06-ES: Robert Marfei (Applicant) v. Ivan Baeza and Director of Employment Standards (Respondents) *(Granted)*

3122-06-ES: Novartis Consumer Health Canada Inc. (Applicant) v. Director of Employment Standards (Respondent) *(Withdrawn)*

3223-06-ES: Amir Mohammad Shirazi a director of Progressive Media Limited (Applicant) v. Guy Gauthier and Director of Employment Standards (Respondents) *(Dismissed)*

3344-06-ES: Sherri Lisk (Applicant) v. Brady Physiotherapy and, Director of Employment Standards (Respondents) *(Terminated)*

3428-06-ES: Christine M. Antle (Applicant) v. Reais Hairstylists Ltd. o/a Mastercuts et al and Director of Employment Standards (Respondents) *(Withdrawn)*

3915-06-ES: Pathminder Inc. (Applicant) v. David Carter and Director of Employment Standards (Respondents) *(Terminated)*

4007-06-ES: Dougherty's Meats (2005) Ltd. (Applicant) v. Roger Jackson and Director of Employment Standards (Respondents) *(Terminated)*

4074-06-ES: Dougherty's Meats (2005) Ltd. (Applicant) v. Grace Moore and Director of Employment Standards (Respondents) *(Terminated)*

4124-06-ES: AKV Inc. o/a Speedy Printing (Applicant) v. Yeganeh Rahmanian and Director of Employment Standards (Respondents) *(Terminated)*

4125-06-ES: Direct Energy Essential Home Services (Applicant) v. Joan Bover and Director of Employment Standards (Respondents) *(Terminated)*

0046-07-ES: Dougherty's Meats (2005) Ltd. (Applicant) v. Pamela Furry and Director of Employment Standards (Respondents) *(Terminated)*

0127-07-ES: Mary Deeb (Applicant) v. Amber & York Holdings Inc. o/a Paws & Claws and Director of Employment Standards (Respondents) *(Terminated)*

0139-07-ES: Dougherty's Meats (2005) Ltd. (Applicant) v. Cheryl Smith and Director of Employment Standards (Respondents) *(Terminated)*

0140-07-ES: Dougherty's Meats (2005) Ltd. (Applicant) v. Amelia Kemp and Director of Employment Standards (Respondents) *(Terminated)*

0325-07-ES: Antonio Carvalho (Applicant) v. Lamantia Garcia Products Ltd. and Director of Employment Standards (Respondents) *(Terminated)*

0327-07-ES: Jose Toste (Applicant) v. Lamantia Garcia Products Ltd. and Director of Employment Standards (Respondents) *(Terminated)*

0328-07-ES: Namgyal Kalsang (Applicant) v. Lamantia Garcia Products Ltd. and Director of Employment Standards (Respondents) *(Terminated)*

0407-07-ES: Ippolito Produce Limited (Applicant) v. Erwin Revin, Antonio Carvalho and Director of Employment Standards (Respondents) *(Dismissed)*

0442-07-ES: Luxury Coach (Applicant) v. Audrey Colbert, Director of Employment Standards (Respondents) *(Terminated)*

0510-07-ES: Gaillind Maintenance Limited (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

0526-07-ES: Ippolito Produce Limited (Applicant) v. Erwin Revin, Antonio Carvalho and Director of Employment Standards (Respondents) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1481-05-HS: The Centre for Addiction and Mental Health (CAMH) (Applicant) v. Ontario Public Service Employees' Union (OPSEU) and Ontario Nurses' Association, Neil Martin, Inspector (Respondents) *(Withdrawn)*

3968-05-HS: Huron Perth Healthcare Alliance (Stratford General Hospital) (Applicant) v. Canadian Union of Public Employees and Ron Elliot, Inspector (Respondents) *(Granted)*

1207-06-HS: Cancoil Thermal Corp. (Applicant) v. Brad Moon, Inspector and United Food and Commercial Workers International Union, Local 175 (Respondents) *(Withdrawn)*

2476-06-HS: Inco Limited (Applicant) v. United Steelworkers of America Local 6500 and Shaun Carter, Inspector (Respondents) *(Withdrawn)*

3031-06-HS: Domtech Inc. (Applicant) v. Paul McTaggart and Brad Moon, Inspector (Respondents) *(Withdrawn)*

3586-06-HS: UFCW, Local 1000A (Applicant) v. Loblaw's Supermarkets Limited, Ministry of Labour (Respondents) *(Withdrawn)*

4013-06-HS: Phantom Industries Inc. (Applicant) v. Vitj Malaiyandi, Douglas West, Inspector (Respondents) *(Withdrawn)*

0175-07-HS: Hydro One Networks Inc. (Applicant) v. Canadian Union of Skilled Workers and Paul Malbouef, Inspector (Respondents) *(Withdrawn)*

0269-07-HS: Chris Dowling and Steve Smith (Applicant) v. Hamilton-Wentworth Detention Centre and Doug Kariam, Inspector (Respondents) *(Terminated)*

0272-07-HS: 1673747 Ontario Inc. o/a Grew Mfg. (Applicant) v. Monique Beatty and Melanie Wegler, Inspector (Respondents) *(Dismissed)*

0438-07-HS: Philips Electronics Ltd (Applicant) v. Arica Mukri, Leo Dumo, Inspector (Respondents) (*Dismissed*)

0474-07-HS: HOCO Limited (Applicant) v. UNITE HERE Ontario Council, Local 75, Teamsters Local Union 879, Monique Lunan, Inspector (Respondents) (*Dismissed*)

0783-07-HS: LEONI Elocab Ltd. (Applicant) v. Gordon Finnie and Oded Nissan, Inspector (Respondents) (*Dismissed*)

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

2886-06-PS: Ontario Public Service Employees Union (Applicant) v. Hôpital Régional de Sudbury Regional Hospital, Northeast Mental Health Centre, Canadian Union of Public Employees and its Local 1623, Ontario Nurses Association (Respondents) (*Granted*)

3017-06-PS: Ontario Public Service Employees Union (Applicant) v. Hamilton Niagara Haldimand Brant Community Care Access Centre, Hamilton Community Care Access Centre, Brant Community Care Access Centre, Community Care Access Centre Niagara, Community Care Access Centre of Halton, Haldimand-Norfolk Community Care Access Centre, Canadian Union of Public Employees and its Local 1287, Canadian Union of Public Employees and its Local 4700; and Ontario Nurses' Association (Respondents) (*Granted*)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1614-03-R; 2906-05-R: Power Workers' Union (Applicant) v. Hydro One Inc., Hydro One Telecom Inc. and SCBN Telecommunications Inc. : Power Workers' Union, Canadian Union of Public Employees Local 1000 C.L.C. (Applicant) v. Hydro One Inc., Hydro One Telecom Inc., Barrie Hydro Energy Services Inc., Innisfil Hydro Distribution Systems Limited, Innisfil Energy Services Limited and SCBN Telecommunications Inc. (Respondents) (*Dismissed*)

0202-04-U: David Cox (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 444 (Respondent) v. DaimlerChrysler Canada Inc. (Intervenor) (*Dismissed*)

0256-07-R: Labourers' International Union of North America, Local 625 (Applicant) v. Seal-On Paving Ltd. (Respondent) (*Granted*)

0365-06-U: Abdulkadir Hassan (Applicant) v. United Steelworkers of America Local 13571 (Respondent) (*Dismissed*)

0400-06-U: Gilbert McIntyre (Applicant) v. Ontario Secondary School Teachers' Federation, District 12 (Respondent) (*Dismissed*)

2035-06-OH: Lynn Gabrielle Barber (Applicant) v. Perth East Fire Department (Respondent) (*Dismissed*)

2685-06-OH: Deon Myers (Applicant) v. 3 Man Sistek Data (Premiere Impressions) (Respondent) (*Dismissed*)

3866-06-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. DRS Structural Inc. (Respondent) (*Dismissed*)

0250-07-G: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. 3247481 Canada Inc. o/a Cayer Construction (Respondent) (*Dismissed*)

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